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Federal Register

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2015–0270]

RIN 3150–AJ71

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System; Certificate of Compliance No. 1014, Amendment No. 10; Corrections

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date and correcting amendments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of May 31, 2016, for the direct final rule that was published in the **Federal Register** on March 14, 2016. The direct final rule amended the NRC's spent fuel storage regulations by revising the Holtec International (Holtec) HI–STORM 100 Cask System listing within the "List of approved spent fuel storage casks" to include Amendment No. 10 to Certificate of Compliance (CoC) No. 1014. In addition, the NRC is correcting the direct final rule because it inadvertently omitted Revision 1 to Amendment Nos. 8 and 9 to CoC No. 1014.

DATES: *Effective date:* The effective date of May 31, 2016, for the direct final rule published March 14, 2016 (81 FR 13265), is confirmed. The correcting amendments are effective on May 31, 2016.

ADDRESSES: Please refer to Docket ID NRC–2015–0270 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0270. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
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FOR FURTHER INFORMATION CONTACT: Robert MacDougall, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5175; email: *Robert.MacDougall@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

On March 14, 2016 (81 FR 13265), the NRC published a direct final rule amending its regulations in § 72.214 of title 10 of the *Code of Federal Regulations* by revising the Holtec HI–STORM 100 Cask System listing within the "List of approved spent fuel storage casks" to include Amendment No. 10 to CoC No. 1014. Amendment No. 10 adds new fuel classes to the contents approved for the loading of 16 x 16-pin fuel assemblies into a HI–STORM 100 Cask System; allows a minor increase in manganese in an alloy material for the system's overpack and transfer cask; clarifies the minimum water displacement required of a dummy fuel rod (*i.e.,* a rod not filled with uranium pellets); and clarifies the design pressures needed for normal operation of forced helium drying systems. Additionally, Amendment No. 10 revises Condition No. 9 of CoC No. 1014 to provide clearer direction on the measurement of air velocity and modeling of heat distribution through the storage system.

The March 14, 2016, direct final rule inadvertently omitted Revision 1 to Amendment No. 8 (effective May 2, 2012, as corrected on November 16, 2012) to CoC No. 1014. In a final rule published in the **Federal Register** on August 18, 2015 (80 FR 49887), the NRC amended its spent fuel storage regulations by revising the Holtec HI–STORM 100 Cask System listing within the "List of approved spent fuel storage casks" to add Revision 1 to Amendment No. 8 (effective May 2, 2012, as corrected on November 16, 2012) to the CoC No. 1014. In addition, the March 14, 2016, direct final rule inadvertently omitted Revision 1 to Amendment No. 9. In a final rule published in the **Federal Register** on January 6, 2016 (81 FR 371), the NRC amended its spent fuel storage regulations by revising the Holtec HI–STORM 100 Cask System listing within the "List of approved spent fuel storage casks" to add Revision 1 to Amendment No. 9 to the CoC No. 1014. This document restores Revision 1 to Amendment Nos. 8 and 9 to CoC No. 1014.

II. Rulemaking Procedure

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. As authorized by 5 U.S.C. 553(b)(B), the NRC finds good cause to waive notice and opportunity for comment on the amendments because they will have no substantive impact and the amendments are of a minor and administrative nature. Specifically, these amendments are to restore Revision 1 to Amendment Nos. 8 and 9 to CoC No. 1014. These amendments do not require action by any person or entity regulated by the NRC. Also, the amendments do not change the substantive responsibilities of any person or entity regulated by the NRC. For these reasons, the NRC finds, pursuant to 5 U.S.C. 553(d)(3), that good cause exists to make the amendments effective upon publication of this document.

III. Public Comments on the Companion Proposed Rule

In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on May 31, 2016. The NRC received four comment submissions with 22 individual comments on the companion proposed rule (81 FR 13295). Electronic copies of these comments can be obtained from the Federal Rulemaking Web site, *http://www.regulations.gov,* by searching for Docket ID NRC–2015–0270. The comments are also available in ADAMS under Accession Nos. ML16105A423, ML16105A424, ML16105A425, and ML16105A426. For the reasons discussed in more detail in Section IV, "Public Comment Analysis," of this document, none of the comments received are considered significant adverse comments as defined in NUREG/BR–0053, Revision 6, "United States Nuclear Regulatory Commission Regulations Handbook" (ADAMS Accession No. ML052720461).

IV. Public Comment Analysis

The NRC received four comment submissions with 22 individual comments on the companion proposed rule. As explained in the March 14, 2016, direct final rule, the NRC would withdraw the direct final rule only if it received a "significant adverse comment." This is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or Technical Specifications.

The NRC determined that none of the comments submitted on this direct final rule met any of these criteria. The comments either were already addressed by the NRC staff's safety evaluation report (SER) (ADAMS Accession No. ML15331A309), or were beyond the scope of this rulemaking. The NRC has not made any changes to the direct final rule as a result of the public comments. However, the NRC will take the opportunity to respond to the comments in a separate **Federal Register** notice that will be published in June 2016. You will be able to access the separate **Federal Register** notice on the Federal rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2015–0270. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2015–0270); (2) click the "Sign up for Email Alerts" link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

The NRC staff has concluded that the comments received on the companion proposed rule for the Holtec HI–STORM 100 Cask System, CoC No. 1014, Amendment No. 10, are not significant adverse comments as defined in NUREG/BR–0053, Revision 6. Therefore, the direct final rule will become effective as scheduled.

List of Subjects for 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Hazardous waste, Indians, Intergovernmental relations, Manpower training programs, Nuclear energy, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183,184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance No. 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014.

Initial Certificate Effective Date: May 31, 2000.

Amendment Number 1 Effective Date: July 15, 2002.

Amendment Number 2 Effective Date: June 7, 2005.

Amendment Number 3 Effective Date: May 29, 2007.

Amendment Number 4 Effective Date: January 8, 2008.

Amendment Number 5 Effective Date: July 14, 2008.

Amendment Number 6 Effective Date: August 17, 2009.

Amendment Number 7 Effective Date: December 28, 2009.

Amendment Number 8 Effective Date: May 2, 2012, as corrected on November 16, 2012 (ADAMS Accession No. ML12213A170); superseded by Amendment Number 8, Revision 1 Effective Date: February 16, 2016.

Amendment Number 8, Revision 1 Effective Date: February 16, 2016.

Amendment Number 9 Effective Date: March 11, 2014, superseded by Amendment Number 9, Revision 1, on March 21, 2016.

Amendment Number 9, Revision 1, Effective Date: March 21, 2016.

Amendment Number 10 Effective Date: May 31, 2016.

Safety Analysis Report (SAR) Submitted by: Holtec International.

SAR Title: Final Safety Analysis Report for the HI–STORM 100 Cask System.

Docket Number: 72–1014.

Certificate Expiration Date: May 31, 2020.

Model Number: HI–STORM 100.

* * * * *

Dated at Rockville, Maryland, this 25th day of May, 2016.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2016–12689 Filed 5–27–16; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, 125, 126 and 127

RIN 3245–AG58

Small Business Government Contracting and National Defense Authorization Act of 2013 Amendments

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule amends the U.S. Small Business Administration's (SBA or Agency) regulations to implement provisions of the National Defense Authorization Act of 2013, which pertain to performance requirements applicable to small business and socioeconomic program set-aside contracts and small business subcontracting. This rule also amends SBA's regulations concerning the nonmanufacturer rule and affiliation rules. Further, this rule allows a joint venture to qualify as small for any government procurement as long as each partner to the joint venture qualifies individually as small under the size standard corresponding to the NAICS code assigned in the solicitation.

DATES: This rule is effective on June 30, 2016.

FOR FURTHER INFORMATION CONTACT: Michael McLaughlin, Office of Policy, Planning and Liaison, 409 Third Street SW., Washington, DC 20416; (202) 205–5353; *michael.mclaughlin@sba.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

SBA published a proposed rule regarding these changes in the **Federal Register** on December 29, 2014 (79 FR 77955), inviting the public to submit comments on or before February 27, 2015. This comment period was extended through April 6, 2015, by notice in the **Federal Register** published on March 9, 2015 (80 FR 12353). SBA also conducted tribal consultations in Washington, DC (February 26, 2015), Catoosa, OK (April 20, 2015), and Anchorage, AK (April 22, 2015), in which SBA accepted comments on the proposed rule. Transcripts of these consultations are in the rule docket (SBA–2014–0006, viewable on *Regulations.gov* using the docket number). SBA received a total of 216 comments on the proposed rule. Twenty-eight comments were supportive of the rule generally without referencing specific sections of the rule. Seventeen of those generally supportive comments advocated for fast implementation of the rule. Several of these commenters suggested that SBA issue this rule as an interim final rule. Once SBA has published a proposed rule, the next step in the process is to analyze public comments and publish a final rule. Publishing an "interim final rule" after publishing a proposed rule would not expedite the process to finalize the provisions contained in the proposed rule. As such, SBA has not followed that recommendation and is publishing this rule as a final rule. Sixteen comments requested an extension of time for the submission of comments. An extension of the comment period was provided through April 6, 2015, and SBA believed that a further extension was not needed. Seven comments did not support the rulemaking generally and did not reference specific sections that were opposed. Some of these comments were related to regulations not subject to changes in the proposed rule and were considered outside the scope of this rulemaking. SBA's discussion below summarizes the proposed rule, the comments related to each section of the proposed rule and SBA's responses.

Summary of Proposed Rule, Comments, and SBA's Responses

Procurement Center Representative Responsibilities

Section 1621 of the National Defense Authorization Act of 2013 (NDAA), Public Law 112–239, 126 Stat. 1632 (Jan. 2013), revised the Small Business Act regarding the responsibilities of Procurement Center Representatives (PCRs). Section 1621 clarifies that PCRs have the ability to review barriers to small business participation in Federal contracting and to review any bundled or consolidated solicitation or contract in accordance with the Small Business Act. SBA proposed to amend 13 CFR 125.2(b)(1)(i)(A), based on the changes in Section 1621(c)(6)(H) of the NDAA. SBA also proposed to add language to § 125.2(b)(1)(i)(A) and to § 125.2(b)(1)(ii), which clarifies that PCRs advocate for the maximum practicable utilization of small business concerns in Federal contracting, including advocating against the unjustified consolidation or bundling of contract requirements.

Pursuant to Section 1621(c)(6)(G) of the NDAA, SBA proposed new § 125.2(b)(1)(iv), which states that PCRs will consult with the agency's Office of Small and Disadvantaged Business Utilization (OSDBU) and Office of Small Business Program (OSBP) Director regarding an agency's decision to convert an activity performed by a small business concern to an activity performed by a Federal employee. SBA also proposed new § 125.2(b)(1)(v) pursuant to the language enacted by Section 1621(c)(6)(F) of the NDAA, which allows PCRs to receive unsolicited proposals from small business concerns and to provide those proposals to the appropriate agency's personnel for review and disposition.

SBA proposed to amend § 125.2(b)(1) and (2), which pertain to Breakout PCRs (BPCRs). Sections 1621(e) and (f) of the NDAA effectively eliminate the statutory authority for the separate BPCR role. As a result, SBA proposed to reassign the responsibilities currently held by BPCRs to PCRs. SBA proposed to add § 125.2(b)(1)(i)(F), which states that PCRs also advocate full and open competition in Federal contracting and recommend the breakout for competition of items and requirements which previously have not been competed. SBA also proposed to eliminate § 125.2(b)(2) that provided guidance on the role and responsibilities of BPCRs, and redesignate current § 125.2(b)(3) as the new § 125.2(b)(2) and remove any reference to BPCRs from that paragraph.

SBA received 13 comments regarding its proposed changes to § 125.2. Ten of these comments were supportive of the changes to this section. One commenter suggested that SBA clarify the proposed language in § 125.2(b)(1)(i)(A), which states "This review includes acquisitions that are Multiple Award Contracts where the agency has not set-aside all or part of the acquisition or reserved the acquisition for small businesses." This commenter suggested that SBA delete the words "or part" to make it clear that PCRs can review any Multiple Award Contract that is not 100% set-aside for small business competition. SBA is not adopting this recommendation because the proposed language states that PCRs can review Multiple Award Contracts that are not entirely set aside for small businesses, meaning partially set-aside. Furthermore, if SBA eliminated "or part" it would indicate that PCRs cannot review Multiple Award Contracts that are entirely set aside for small businesses, which is within the PCRs responsibilities.

Another commenter suggested that SBA should meet with contracting officers to assist with setting aside contracts for small businesses. It is the role of the PCR to review procurements that are not set aside for small businesses. PCRs are often located at the procuring activity and routinely interface with contracting officers regarding whether to set aside acquisitions for small business competition. It is already part of their responsibilities to meet with contracting officers and discuss acquisition planning. As such, it is not necessary to adopt this suggested change.

Another commenter suggested that the term "acquisition" as used in § 125.2 should be changed to "acquisition, including bridge, interim, and follow-on contracts." The term "acquisition" is defined broadly in section 2.101 of the Federal Acquisition Regulation (FAR) to include "award of contracts." The commenter is referencing specific types of contracts that are included in the FAR definition of "acquisition." SBA believes that this clarification is not necessary and does not adopt it in this final rule.

Another commenter suggested that PCRs should unbundle sole source contracts that are made to incumbent vendors in order to allow the agency time to competitively re-procure the goods or services. The proposed rule directly addresses this concern by providing PCRs with the ability to advocate against consolidation or bundling of contract requirements and reviewing any justification provided for such bundling or consolidation. The same commenter also suggested that a prime contract not be awarded on a sole source basis unless the prime contractor agrees to retain its subcontractors under the previous award and incorporates the small business plan associated with the previous award. SBA does not have the authority to mandate which subcontractors a prime contractor chooses to include in a subcontracting plan or to mandate that a prime contractor incorporate a particular subcontracting plan into its offer, and therefore SBA is not adopting this suggestion.

One commenter requested clarification of the language proposed in § 125.2(b)(1)(i)(F) stating, "PCRs also advocate competitive procedures and recommend the breakout for competition when appropriate." The commenter raised concerns that this language will discourage contracting officers from utilizing the sole source authority provided for the 8(a) Business Development (BD) program, the Women-Owned Small Business (WOSB) program and the HUBZone program. The commenter suggests that SBA clarify what a PCR would consider as "appropriate" in the decision to recommend competition, and if such a decision is made, that contracting officers and PCRs document this decision in the contract file along with an explanation for why competition is considered more appropriate than a small business program sole source award. The language referenced by the commenter is a BPCR responsibility that SBA is transferring to PCRs due to the statute's elimination of the BPCR role. In addition, PCRs provide contracting officers with guidance on the availability of sole source and competitive options, but the contracting officer has the discretion to choose an acquisition program or method, in accordance with SBA's guidance on parity.

Another commenter noted that PCRs will have to coordinate with agency officials to implement the NDAA's requirement, set forth at § 125.2(b)(1)(iv), that PCRs consult with agency OSDBUs regarding an agency's decision to convert an activity performed by a small business concern to an activity performed by a Federal employee. The statute provides that the PCR will consult with the OSDBU. SBA understands that the PCR and OSDBU will consult with other agency officials, as necessary. However, SBA does not believe that additional clarification is necessary and therefore SBA adopts the proposed language in this final rule.

Section 1623 of the NDAA requires that each Federal department or agency provide opportunities for the participation of small business concerns during acquisition planning processes and in acquisition plans. This section also requires that each Federal department or agency invite the participation of the appropriate OSDBU Director in acquisition planning processes and provides that Director with access to acquisition plans. SBA incorporates the exact statutory text from Section 1623 of the NDAA into 13 CFR 125.2(c)(1) by adding new paragraphs (vi) and (vii).

Limitations on Subcontracting

Section 1651 of the NDAA, as codified at 15 U.S.C. 657s, requires that the limitations on subcontracting for full or partial small business set-aside contracts, HUBZone contracts, 8(a) BD contracts, Service-Disabled Veteran-Owned (SDVO) Small Business Concern (SBC) contracts, and WOSB and Economically Disadvantaged Women Owned Small Business (EDWOSB) contracts, be evaluated based on the percentage of the overall award amount that a prime contractor spends on its subcontractors. Significantly, the NDAA excludes from the limitations on subcontracting calculation the percentage of the award amount that the prime contractor spends on similarly situated entity subcontractors. Specifically, the NDAA deems work done by similarly situated entities not to be subcontracted work for purposes of complying with the limitations on subcontracting requirement. Thus, work done by a similarly situated entity is counted in determining whether the applicable limitation on subcontracting is met. When a contract is awarded pursuant to a small business set-aside or socioeconomic program set-aside or sole source authority, a similarly situated entity subcontractor is a small business concern subcontractor that is a participant of the same SBA program that qualified the prime contractor as an eligible offeror and awardee of the contract.

Currently, SBA's regulations contain different terms for compliance with the performance of work requirements based on the type of small business program set-aside at issue. The method for calculating compliance not only varies by program set-aside type, but also based on whether the acquisition is for services, supplies, general construction, or specialty trade construction. Section 1651 of the NDAA creates a shift from the concept of a required percentage of work to be performed by a prime contractor to the concept of limiting a percentage of the award amount to be spent on subcontractors. The goal is the same: To ensure that a certain amount of work is performed by a small business concern (SBC) that qualified for a small business program set-aside or sole source procurement due to its socioeconomic program status. The Government's policy of promoting contracting opportunities for small businesses, HUBZone SBCs, SDVO SBCs, WOSBs/EDWOSBs, and 8(a) SBCs is seriously undermined when firms pass on work in excess of applicable limitations to firms that are other than small or that are not otherwise eligible for specific types of small business contracts. SBA has revised all references to "performance of work" requirements found in parts 121, 124, 125, 126, and 127 to "limitations on subcontracting."

SBA proposed to totally revise § 125.6 to take into account the new definition and calculation for the limitations on subcontracting as described in Section 1651 of the NDAA. Additionally, SBA reorganized and simplified this section for easier use. Proposed § 125.6(a) explains how to apply the limitations on subcontracting requirements to small business set-aside contracts. Instead of providing different methods of determining compliance based on the type of small business set-aside program at issue and the type of good or service sought, Section 1651(a) of the NDAA provides one method for determining compliance that is shared by almost all applicable small business set-aside programs, but varies based on whether the contract is for services, supplies or products, general construction, specialty trade construction, or a combination of both services and supplies.

The approach described in Sections 1651(a) and (d) of the NDAA is to create a limit on the percentage of the award amount received by the prime contractor that may be spent on other-than-small subcontractors. Specifically, the NDAA provides that a small business awarded a small business set-aside, 8(a), SDVO small business, HUBZone, or WOSB/EDWOSB award "may not expend on subcontractors" more than a specified amount. However, as noted below, work done by "similarly situated entities" does not count as subcontracted work for purposes of determining compliance with the limitation on subcontracting requirements. Proposed § 125.6(a)(1) and (a)(2) addressed the limitations on subcontracting applicable to small business set-aside contracts requiring services or supplies. The limitation on subcontracting for both services and supplies is statutorily set at 50% of the award amount received by the prime contractor. *See* 15 U.S.C. 657s(a).

Proposed § 125.6(a)(3) addressed how the limitation on subcontracting requirement would be applied to a procurement that combines both services and supplies. This provision intended to clarify that the contracting officer's (CO) selection of the applicable NAICS code will determine which limitation of subcontracting requirement applies. Proposed § 125.6(a)(4) and (5) addressed the limitations on subcontracting for general and specialty trade construction contracts. SBA proposed to keep the same percentages that currently apply: 15% for general construction and 25% for specialty trade construction.

SBA received 115 comments regarding proposed § 125.6(a). The overwhelming majority of these comments requested that SBA allow contractors to exclude the "cost of materials", as that term is currently defined in § 125.1(i), from the limitations on subcontracting calculation for all contracts. SBA notes that the cost of materials has never been, and was not proposed to be, a term that applies to service contracts. Historically and as proposed, the term cost of materials is applicable to supply, construction, or specialty trade construction set-aside contracts. "Cost of materials" is currently excluded from the performance of work requirements and SBA did not intend to remove this exclusion in proposed paragraph 125.6(a). The exclusion of "cost of materials" from the limitations on subcontracting for supply, construction, and specialty trade construction procurements is included in this final rule. Several commenters suggested that SBA extend this exclusion to procurements assigned a service NAICS code, but, SBA does not believe that this change is needed. As discussed below, because the limitations on subcontracting for a services contract apply only to the services portion of the contract, any "cost of materials" would not be part of the services to be provided through the contract and, thus, would be excluded from the limitations on subcontracting analysis on that basis.

For a mixed contract (*i.e.*, one in which both supplies and services are being procured), commenters believed that the limitation on subcontracting should apply only to that portion of the requirement identified as the primary purpose of the contract. In other words, where, for example, a contracting officer has assigned a services NAICS code to a requirement that has both a services and supply component, the commenters believed that the limitation on subcontracting should apply only to the services portion of the work to be performed. In our view, Section 46(a)(3) of the Small Business Act, 15 U.S.C. 657s(a)(3), which was established by Section 1651 of the NDAA, provides the necessary guidance for mixed contracts. The CO must first determine which category, services or supplies, has the greatest percentage of the contract value, and then assign the appropriate NAICS code. The corresponding limitations on subcontracting will apply to the contract, depending on whether the CO has selected a supply NAICS code or a services NAICS code. Thus, the statutory authority authorizes that the limitations on subcontracting apply only to that portion of the requirement identified as the primary purpose of the contract. SBA has clarified that intent in this final rule, and has moved the requirements pertaining to mixed contracts to § 125.6(b). Therefore, where a procurement combines supplies and services, the limitations on subcontracting apply only to subcontracts that correspond to the principal purpose of the prime contract. For a contract principally for services, but which also requires supplies, this means that the prime contractor or its similarly situated subcontractors cannot subcontract more than 50 percent of the services to other than small concerns. However, the prime contractor can subcontract all of the supply components to any size business.

Several commenters also recommended that SBA change the current definition of "cost of materials" to include any service or product that cannot be procured from a small business. Other commenters recommended that very specific types of services be included in the definition of "cost of materials" such as transportation when procured in the performance of an environmental remediation procurement. SBA did not propose to change the definition of "cost of materials" and does not believe that a change is necessary or required to implement NDAA 2013.

One commenter requested clarity on whether contractors can exclude from the limitations on subcontracting the non-service costs associated with a procurement for services. As noted above, SBA believes that only the services portion of a requirement identified as a services requirement are considered in determining compliance with the limitation on subcontracting requirements. This means that any costs associated with supply items are excluded from that analysis. However, all costs associated with providing the services, including any overhead or indirect costs associated with those services, must be included in determining compliance. This final rule clarifies this application. SBA has also added another example to § 125.6(a)(3) that involves both supplies and services to clarify how the limitations on subcontracting apply in these circumstances.

As noted above, the NDAA prohibits subcontracting beyond a certain specified amount for any small business set-aside, 8(a), SDVO small business, HUBZone, or WOSB/EDWOSB contract. Section 1651(b) of the NDAA creates an exclusion from the limitations on subcontracting for "similarly situated entities." In effect, the NDAA deems any work done by a similarly situated entity not to constitute "subcontracting" for purposes of determining compliance with the applicable limitation on subcontracting. A similarly situated entity is a small business subcontractor that is a participant of the same small business program that the prime contractor is a certified participant and which qualifies the prime contractor to receive the award. Subcontracts between a small business prime contractor and a similarly situated entity subcontractor are excluded from the limitations on subcontracting calculation because it does not further the goals of SBA's government contracting and business development programs to penalize small business prime contract recipients that benefit the same small business program participants through subcontract awards.

The proposed rule identified SBA's concern with determining compliance with the limitations on subcontracting by looking solely to the first tier of the contracting process (agreements between the prime contractor and its direct subcontractors). If all that was looked at was the first tier subcontract, that first tier subcontractor could in turn pass all of its performance on to a large or otherwise not similarly situated entity through a second subcontract. SBA believes that the intent of the changes in the NDAA were to ensure that the benefits of set-aside contracts flow to the intended beneficiaries. SBA does not believe that an intended consequence of the change was to make it easier to divert these benefits to ineligible entities by merely moving contracts down one or two tiers in the contracting process. As such, the proposed rule retained a requirement that firms benefiting from contracts, and their similarly situated subcontractors perform a required amount of work on the contract themselves. SBA believes that requiring firms to perform significant portions of the work, as well as to retain a significant portion of the contract award, will continue to help ensure that the benefits from these contracts flow to the intended parties.

SBA requested comments on this issue, including whether there may be unintended consequences, as well as comments about SBA's proposed solution. SBA also requested comments on whether prime contractors should be required to report to the contracting officer concerning meeting the performance of work requirements, and comments concerning the frequency and method of reporting.

SBA received three comments regarding SBA's proposal to apply the limitations on subcontracting collectively to all similarly situated entities that are performing work on the contract and that are counted toward the prime contractor's percentage of performance. Two commenters supported SBA's proposed approach and one commenter opposed this approach, and suggested that SBA apply the limitations on subcontracting only to the prime contractor and the first tier subcontractor. Applying the limitations on subcontracting to only the prime contractor and first tier subcontractor creates the possibility that the first tier subcontractor may subcontract 100% of the work it received from the prime to an entity that is not similarly situated as the prime contractor. SBA remains concerned that this would create a loophole for entities that are not small business concerns and would not have qualified to receive the prime contract to benefit, as subcontractors, from government contracts that are set aside for performance by small business concerns. To address these concerns, SBA will apply the limitations on subcontracting collectively to the prime and any similarly situated first tier subcontractor, and any work performed by a similarly situated first tier subcontractor will count toward compliance with the applicable limitation on subcontracting. Any work that a similarly situated first tier subcontractor subcontracts, to any entity, will count as subcontracted to a non-similarly situated entity for purposes of determining whether the prime/sub team performed the required amount of work. In other words, work that is not performed by the employees of the prime contractor or employees of first tier similarly situated subcontractors will count as subcontracts performed by non-similarly situated concerns.

Proposed § 125.6(b)(1) required prime contractors to enter a written agreement with each similarly situated entity that identifies the similarly situated entity and the percentage of work to be performed by that entity. The proposed rule provided that the written agreement must be signed by the similarly situated entity and provided to the contracting officer with the prime contractor's offer. Proposed § 125.6(b)(2) stated that it is immaterial whether the specific subcontractors identified in the written agreement satisfy the percentage of work identified, as long as all similarly situated entities collectively, along with the prime contractor, satisfy the performance of work requirements. Proposed § 125.6(b)(3) stated that a prime contractor may be debarred for a violation of the spirit and intent of this paragraph.

SBA received forty-seven comments related to its proposed § 125.6(b), which described how subcontracts to similarly situated entities will be excluded from the prime contractor's limitations on subcontracting. Eight of these comments generally supported § 125.6(b) as proposed. Four of these comments were considered outside the scope of this rulemaking as they advocated for an interim final rule to apply the exclusion of subcontracts to similarly situated entities from the limitations on subcontracting. One comment generally opposed proposed § 125.6(b), but did not have any suggested alternatives.

Twenty-three of the forty-seven comments received were related to proposed § 125.6(b)(1), which discussed the details that must be included in the required written agreements between the prime contractor and its similarly situated entity subcontractors. Six of these commenters supported the concept of a required written agreement but disagreed with specific aspects of the agreement such as identifying the proposed similarly situated entity subcontractors and identifying the percentage of work to be performed by those subcontractors. Seventeen of the commenters opposed the requirement for any written agreement between a prime contractor and a similarly situated entity subcontractor because it would be impossible to know their identity and possible percentage of performance in advance of the award and because it would be unnecessarily burdensome on small business prime contractors to draft and enter these agreements. SBA also received comments concerning how to address the substitution of one subcontractor for another, or a decision by the prime contractor after award to either perform the work itself or subcontract work to a similarly situated entity.

In response to these comments, SBA has decided not to require a written agreement in order for a prime contractor to rely on the work to be performed by similarly situated entities. For many years SBA's rules have allowed similarly situated entities to be counted towards the limitations on subcontracting requirements under SDVO or HUBZone set-asides or sole source awards, without also requiring a separate written agreement. There is no evidence that this long-standing policy has been difficult to understand or administer, and the rule change that limits subcontracting without regard to cost incurred for personnel should make it easier to track and identify subcontracts, especially in light of other existing requirements to report on subcontracts, such as FAR 52.204–10 (48 CFR 52.204–10). (Reporting Executive Compensation and First-Tier Subcontract Awards). In addition, SBA is concerned that requiring a written agreement would cause an administrative burden on small business concerns, which would in turn cause them to utilize this tool less often, for fear of violating the written agreement or because they would need to constantly amend the agreement based on modifications with respect to team members or to percentages of work performed by individual team members. Further, requiring a written agreement prior to offer would limit a firm's ability to decide to utilize a similarly situated entity after award and during contract performance. Many of the commenters pointed out that it may be difficult to determine whether a subcontractor will or will not be used on certain contracts, especially indefinite delivery indefinite quantity task or delivery order contracts. Small business concerns should have the discretion to run their business and perform contracts as they see fit, and the discretion to subcontract or not subcontract at any point during contract performance, provided they comply with the overall performance requirements. Further, SBA and agencies do not have the resources to review agreements or amendments to those agreements.

SBA received several comments in response to its request for comments on whether prime contractors should be required to report to the contracting officer on their compliance with the limitations on subcontracting. Eight commenters supported mandatory compliance reporting, and five of those commenters recommended that the reporting be made at the end of the contract term. Three of the supportive commenters recommended compliance reporting on a quarterly or annual basis. Three commenters opposed mandatory compliance reporting because it would be too burdensome on small business concerns. One commenter suggested that SBA use its auditing and investigating authority to determine compliance rather than requiring contractors to report their compliance. Another commenter suggested that the only necessary compliance reporting should be made in the offer.

In addition to the requirement for a written agreement, SBA also proposed to require compliance reporting from small business concerns that rely on similarly situated entities to meet their performance obligations under a set aside contract. Notably, SBA did not propose to require compliance reporting from all small business concerns (*i.e.,* firms that do not rely on similarly situated small business concerns to meet their performance obligations). Upon further review, SBA believes that this proposal would create a disincentive to utilize this new statutory authority. Compliance reporting was not required by the statute, and in fact, reliance on similarly situated entities to help meet their performance requirements actually makes it easier these firms to comply with their obligations. Moreover, requiring a prime contractor to report on compliance with the limitations on subcontracting when it uses one or more similarly situated entities could hamper flexibility for firms during contract performance. For example, a firm may initially intend to comply on its own, but may find during contract performance that it must rely on one or more similarly situated subcontractors to meet its performance obligations. In addition, a firm may intend to use one or more similarly situated entities to help it meet its performance obligations, but then may decide during contract performance that it will perform all of the required work with its own employees. These practical realities have led us to remove the compliance reporting requirement with respect to similarly situated entities. SBA may, in the future, propose a rule that requires compliance reporting from all small business concerns, not just those that rely on similarly situated entities. However, such a change would require notice and a request for public comment that is not part of this rulemaking.

For many years, SBA's regulations have allowed similarly situated entities to count towards fulfilling the limitations on subcontracting requirements under a HUBZone or SDVO set-aside or sole source contract, without a requirement to report to the CO. As discussed above, prime contractors are already required to report on subcontracting pursuant to FAR clause 52.204–10 (48 CFR 52.204–10). Thus, because SBA is not requiring written agreements in this final rule, at this time SBA has decided not to require compliance reports from firms that are utilizing similarly situated subcontractors. SBA believes that to the extent compliance reporting should be required, it should be required from all small businesses, not just those that team with similarly situated subcontractors. Thus, SBA intends to issue a proposed rule to request public comment on the issue of whether all small businesses (and not only those that are using similarly situated entities to perform a contract) should be required to report on compliance with the limitations on subcontracting on set-aside contracts. SBA understands the recommendations made by the Government Accountability Office to strengthen the monitoring and oversight of the required performance percentages for all small businesses that receive set-aside awards, including 8(a) contractors, and believes that a separate rulemaking should address that issue more appropriately.

SBA's proposed § 125.6(b) explained that work subcontracted to similarly situated entities may be excluded from a prime contractor's calculation of its limitation on subcontracting. SBA proposed to include three examples to § 125.6(b) to demonstrate how a small business concern or Federal agency should apply the exclusion for similarly situated entities and determine compliance with the limitations on subcontracting. The final rule has redesignated proposed § 125.6(b) as § 125.6(c). As mentioned above, in response to comments, SBA is adding three more examples to redesignated § 125.6(c) to clarify how the limitations on subcontracting apply when the procurement involves a mix of services and supplies.

SBA received six comments in response to proposed § 125.6(b)(3). All six commenters opposed SBA's ability to consider a party's failure to comply with the spirit and intent of the subcontract with a similarly situated entity as a basis for debarment. These commenters argued that the proposed regulation is too vague because it is unclear how SBA would demonstrate a violation of the spirit and intent, and that the penalty of debarment is too severe. SBA clarifies that a contractor's violation of the spirit and intent of a subcontract with a similarly situated entity is something SBA may consider as a basis for debarment, but is not required to consider for debarment. SBA does not take debarment and suspension lightly and understands fully the implications of such an action. As such, SBA would not initiate any debarment or suspension action unless SBA believed that the government's interests needed to be protected. This would happen where, for example, a small business prime contractor had no intent to actually use similarly situated entities. In such a case, the firm's certification would be a misrepresentation to the government, and the government could no longer rely on any representations made by the firm. SBA would not consider a debarment or suspension action where a firm made a good faith representation that it, along with one or more similarly situated entities, would meet the performance of work requirements and through unforeseen circumstances it failed to do so. Additionally, should SBA choose to consider this as a basis for debarment, the entity at issue would have an opportunity to respond to any allegation with its own arguments and evidence. SBA believes this provision is necessary to deter potential fraud, waste, and abuse of the prime contractor's ability to exclude similarly situated entity work from its limitations on subcontracting. SBA has moved the discussion of debarment to redesignated § 125.6(h).

SBA proposed to relocate the definitions that are relevant to the limitations on subcontracting that are currently found in § 125.6(e) to § 125.1

with the other definitions that are applicable to part 125. Section 1651(e) of the NDAA provides the definitions of "similarly situated entity" and "covered small business concern." Proposed § 125.1(x) interprets the statutorily prescribed definition for similarly situated entity.

SBA received 34 comments about its proposed definition of similarly situated entity. Fifteen of these comments opposed SBA's proposition that a small business concern qualifies as a similarly situated entity if it qualifies as small for the NAICS code assigned to the prime contractor's procurement, in addition to the other requirements included in the definition of "similarly situated entity." Three commenters requested further clarification of the definition. Two commenters supported the definition as proposed. The remaining comments were questions regarding the application of the proposed definition to procurements for specific types of services or were comments that were considered outside the scope of this rulemaking, as they suggested changes that were not proposed and are not authorized by the statute. For example, one commenter recommended that when a solicitation requires the use of a specific subcontractor, that entity should qualify as a similarly situated entity, regardless of the subcontractor's size or small business program participation. SBA believes that this would conflict with the statutory intent that only entities that would be eligible as prime contractors may qualify as similarly situated entity subcontractors. Another commenter recommended that all individuals classified by the Internal Revenue Service as independent contractors should be included in the definition of similarly situated entity. Again, this would conflict with the statutory intent that only contractors who would qualify for the prime contract are eligible to count toward the prime contractor's performance of work as similarly situated entity provisions. However, SBA has clarified in § 125.6(e)(3) that performance by an independent contractor is considered a subcontract, and may qualify as a similarly situated entity if the contractor meets the relevant criteria.

The majority of the questions related to the application of the definition to procurements for architecture and engineering services. Often the prime contract is assigned the NAICS code representing architecture services and has a size standard that is less than the size standard for engineering services. In these cases, the engineering services are often subcontracted and commenters were concerned about how the engineering firm could qualify as a similarly situated entity if it were required to comply with the size standard assigned to the prime contract. SBA received other comments which described complex procurements involving multiple services. Firms that are small for certain types of services would not qualify as small for the NAICS assigned to the contract. In response to the comments received, SBA is not adopting its proposed definition of "similarly situated entity" and instead will allow an entity to qualify as a similarly situated entity if it is small for the NAICS code that the prime contractor assigns to the subcontract. SBA believes that this alteration to the definition will address the concerns raised about specific types of service procurements. Requiring the subcontractors to be small for the size standard assigned to the prime contract would unduly restrict the ability of prime contractors to find and use similarly situated entities to satisfy the limitations on subcontracting. SBA believes the approach adopted in this final rule will increase the ability of small business prime contractors to utilize similarly situated entity subcontractors. In addition, this approach is consistent with SBA's rules which require a prime contractor to assign the NAICS code to a subcontract which describes the principal purpose of the subcontract. 13 CFR 125.3(c)(1)(v).

In § 125.6(c), SBA proposed to require a certification requirement in connection with the limitations on subcontracting requirement. However, existing regulations require firms to agree to comply with the limitations on subcontracting in connection with a set-aside contract, including firms that are utilizing similarly situated entities, and it is SBA's intent to continue that practice. Consequently, SBA's rules do not specifically require certification from the prime contractor when utilizing similarly situated entities. In order to be awarded a set-aside contract as a small business, the prime contractor must agree to comply with the limitations on subcontracting in connection with the offer, whether that entails using similarly situated entities or not.

Proposed § 125.6(f) and (h) contained language that is included in the current rule and did not contain any proposed changes to that language aside from adding new headings to these paragraphs and reorganizing this language. These provisions have been redesignated as § 125.6(d) and (e) in this final rule. Proposed § 125.6(f) discussed HUBZone procurements of commodities. SBA did not receive any comments within the scope of this rulemaking that relate to proposed § 125.6(f) and SBA is adopting the language of proposed § 125.6(f) in § 125.6(d). Proposed § 125.6(g) discussed how to request a change in the applicable limitation on subcontracting for a particular industry. SBA received two comments related to proposed § 125.6(g). One comment supported the language and the other comment was a question regarding the transition period for industries where the limitations on subcontracting percentages do not align with industry practices. It is unclear what the commenter is requesting as this paragraph does not reference a transition period. This final rule adopts the language of proposed § 125.6(g).

Proposed § 125.6(h) discussed the period of time used to determine compliance with the limitations on subcontracting. While SBA did not propose a change to the time period used to determine compliance, SBA received 15 comments related to this paragraph. Twelve of the comments contained suggestions for how to modify the proposed language to be less burdensome on small business prime contractors and allow prime contractors to have the maximum flexibility to choose and manage subcontractors. The majority of these commenters suggested that SBA use the entire contract term, the base and all option periods, to determine whether the prime contractor has complied with the limitations on subcontracting. Other commenters suggested that periodic checks of compliance would suffice in addition to checking compliance during contract close-out. The remaining commenters believed that the current requirement was too onerous on prime contractors to check compliance for each task order issued under an IDIQ contract.

In response to these comments, SBA again emphasizes that redesignated paragraph (e) is not a change in policy. It recites the policy set forth in a prior SBA rulemaking on multiple award contracting, as set forth at § 125.2(e)(2)(iv), but clarifies that this policy applies to single award task and delivery order contracts, not just multiple award contracts. SBA believes that this provides contracting officers with the maximum flexibility to determine the time period that will be used for determining compliance with the limitations on subcontracting for performance of a task or delivery order contract. SBA does not believe it is appropriate for compliance to be determined at the end of the contract term, including all option periods, because it would eliminate the ability to monitor compliance during performance and request a proposed corrective action from the contractor in order to satisfy the limitations on subcontracting during the performance period. When compliance is monitored per base period and each option period, or per order in some cases, it helps ensure that the intended benefits are flowing to the intended recipients. If the policy were to wait until performance was concluded, the remedies would be much more limited.

Proposed § 125.6(i) addressed how the limitations on subcontracting apply to members of a Small Business Teaming Arrangement (SBTA) that are exempt from affiliation according to § 121.103(b)(9). Proposed § 125.6(i) stated that the limitations on subcontracting apply to the combined effort of the SBTA members, not to the individual members of the SBTA separately. However, SBTAs only apply to bundled contracts, and a bundled contract is a contract that is not suitable for award to a small business concern. The Small Business Act allows small businesses to team together on a bundled contract and requires the agency to consider the capabilities of subcontractors on the team, and exempt those team members from affiliation. 15 U.S.C. 644(e)(4). If a contract contains a reserve, it is suitable for award to a small business, and thus the contract is not bundled and the SBTA would not apply. Thus, SBA is removing language concerning reserves from § 121.109(b)(9) and language concerning SBTAs from § 125.6, because the limitations on subcontracting do not apply. SBTAs with respect to bundled and consolidation contracts are discussed in depth at § 125.2(b)(iii)(G).

SBA proposed to add new § 125.6(j), which exempted small business set-aside contracts valued between $3,500 and $150,000 from the limitations on subcontracting requirements. Section 46 of the Small Business Act mandates that the statutory performance of work requirements (limitations on subcontracting) apply to small business set-aside contracts with values above $150,000, and contracts of any amount awarded to socioeconomically disadvantaged contracting programs, such as 8(a), WOSB/EDWOSB, HUBZone, and SDVO set-aside contracts. 15 U.S.C. 657s. Although the limitations on subcontracting apply to all of these contracts, Section 46 does not specifically cite Section 15(j) of the Small Business Act, which is the statutory authority for non-socioeconomically disadvantaged small business set-asides between $3,500 and $150,000. Further, Section 15(j) of the Small Business Act does not mention any limitation on subcontracting requirements in connection with the performance of set-aside contracts under Section 15(j). Thus, the FAR provides that "[t]he contracting officer shall insert the clause at 52.219–14, Limitations on Subcontracting, in solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set aside or reserved for small business and the contract amount is expected to exceed $150,000." FAR 19.508(e) (48 CFR 19.508(e)). SBA proposed not to expand the application of the limitations on subcontracting to apply to small business set-asides below $150,000, but rather to adopt what the FAR has done. The limitation on subcontracting requirements would continue to apply to all 8(a), HUBZone, SDVO, and WOSB/EDWOSB set-aside contract awards regardless of value, including but not limited to contracts with values between $3,500 and $150,000. SBA requested comments regarding whether the limitations on subcontracting should apply to small business set-aside contracts valued between $3,500 and $150,000. In addition, SBA requested comments on whether, for policy reasons and for purposes of consistency, the performance of work/subcontracting limitation requirements should apply to a small business set-aside contract with a value between $3,500 and $150,000.

SBA received thirteen comments regarding proposed § 125.6(j). Ten of these comments supported SBA's proposed approach to exclude procurements with a value between $3,500 and $150,000 from the limitations on subcontracting. One commenter opposed this approach and stated that eliminating the application of the nonmanufacturer rule (NMR) to procurements of this value would open itself up to direct competition with non-U.S., other than small manufacturers. Another commenter suggested that SBA should exclude all small business program set-aside procurements valued between $3,500 and $150,000 from the limitations on subcontracting rather than just small business set-aside procurements. The remaining comment received was outside the scope of this rule-making.

In response to these comments, SBA notes that the limitations on subcontracting rule and the NMR as set forth in the Small Business Act do not exclude set-asides under other authorities from those requirements based on the value of the contract. 15 U.S.C. 657s. The only set-aside authority that is not cited in the limitations on subcontracting provision is Section 15(j) of the Small Business Act, which is the statutory authority for small business set-asides valued between $3,500 and $150,000. SBA is adopting the proposed language of § 125.6(j), in redesignated § 125.6(f), as the majority of comments supported this approach and it is supported by the Small Business Act and consistent with the existing FAR.

Section 1652 of the NDAA, codified at 15 U.S.C. 645 (Section 16 of the Small Business Act), prescribes penalties for concerns that violate the limitations on subcontracting requirements. SBA proposed to add new § 125.6(k) to incorporate these penalties into the regulations. Proposed § 125.6(k) stated that concerns that violate the limitations on subcontracting are subject to the penalties listed in 15 U.S.C. 645(d) except that the fine associated with these penalties will be the greater of either $500,000 or the dollar amount spent in excess of the permitted levels for subcontracting.

SBA received twenty-nine comments related to proposed § 125.6(k). Twenty-eight of these comments requested that SBA alter this paragraph to lower the penalties and allow a good faith exception for a violation of the limitations on subcontracting. Most of these commenters were concerned that by violating the limitations on subcontracting by even $1, possibly due to a miscalculation or a change in the Service Contract Act wage rates, a prime contractor could be exposed to a minimum fine of $500,000. Many commenters requested that SBA change the language from imposing a minimum fine of $500,000 to imposing a fine that is the lesser of $500,000 or the amount spent in excess of the permitted levels. Several commenters requested that the fine be imposed on the subcontractor that is not qualified to receive the funds, as it is likely that the prime contractor relied in good faith on a misrepresentation of the subcontractor's small business or small business program participation status. Other commenters requested that SBA allow a contractor that has violated the limitations on subcontracting to submit a mitigation plan and provide the contracting officer with discretion to apply the penalty when appropriate and in an amount proportional to the severity of the violation. One commenter supported the penalty language as proposed.

In response to these comments, SBA notes that the language of proposed § 125.6(k) mirrors the language of Section 1652 of the NDAA. The penalty provision is statutory and the use of the $500,000 fine as the minimum amount to be applied is also statutory. SBA believes that the penalty provision will deter contractors from agreeing to comply with the limitations on subcontracting without a practical plan for compliance because it provides a strong enforcement mechanism. It is critical that firms that obtain set-aside and preferential contracts comply with applicable subcontracting limitations. The government's policy of promoting contracting opportunities for small and socioeconomically disadvantaged businesses is seriously undermined when firms pass on work in excess of applicable limitations to firms that are other than small or that are not disadvantaged. SBA is adopting the proposed language into redesignated § 125.6(h).

This rule also proposed to revise § 121.103(h)(4). Paragraph (h) discusses the circumstances under which SBA will find affiliation among joint venturers for size purposes. Paragraph (h)(4) addresses the ostensible subcontractor rule, which is the concept that a subcontractor who performs the majority of the primary and vital requirements of a contract or whom the prime contractor is unusually reliant upon may be considered a joint venturer with the prime contractor and thus affiliated with the prime contractor for size determination purposes. SBA proposed to revise this paragraph to exclude subcontractors that are similarly situated subcontractors, as that term is defined in 13 CFR 125.1, from affiliation under the ostensible subcontractor rule. Such a position clearly flows from the NDAA's treatment of similarly situated subcontractors.

SBA received eleven comments in response to proposed § 121.103(h)(4). All eleven comments supported the exclusion of similarly situated entity subcontractors from the application of the ostensible subcontractor rule, as discussed in § 121.103(h)(4). As such, SBA is adopting the language in § 121.103(h)(4) as proposed.

SBA proposed to amend § 124.510(a), (b), and (c) to reflect the limitations on subcontracting rules with respect to the 8(a) Business Development (BD) program. Part 124 addresses the 8(a) BD program and the limitations on subcontracting that apply to procurements set aside for competition among 8(a) BD participants. SBA proposed to delete paragraphs (a) and (b) and add new paragraph (a). Currently, paragraphs (a) and (b) discuss how 8(a) BD participants can comply with the performance of work requirements even though these specifications are also discussed in § 125.6. To eliminate confusion and repetition, SBA proposed to remove current paragraph (b) and add a new paragraph (a), which will direct 8(a) BD participants to comply with the limitations on subcontracting set forth in § 125.6. The proposed rule would redesignate current paragraph (c) as paragraph (b) and include references to the limitations on subcontracting as opposed to the performance of work requirements in newly redesignated paragraph (b). The NDAA uses the term "limitations on subcontracting" to describe the concept that is currently referred to as "performance of work requirements." This change provides consistency throughout the rules.

SBA received seventeen comments in response to the proposed language in § 124.510. Ten of these commenters opposed the proposed language and specifically disagreed with providing contracting officers the discretion to apply the limitations on subcontracting to 8(a) contracts per order. Commenters also opposed SBA's proposed § 124.510(b)(2), which allows the SBA District Director the ability to waive the applicable limitations on subcontracting in certain circumstances. Three of the comments received were suggestions to modify the language of proposed § 124.510(b) to clarify that subcontracts awarded to similarly situated entities for an 8(a) procurement are not counted toward that 8(a) prime contractor's limitations on subcontracting but are counted toward their non-8(a) revenue for purposes of meeting their business activity targets. Two commenters supported the language of § 124.510(b) as proposed.

For purposes of counting 8(a) revenue, the dollar amount of a prime contract award is credited towards the revenue of the prime contractor. Thus, to the extent an 8(a) prime decides to utilize a subcontractor for purposes of meeting the limitations on subcontracting provisions, any amount subcontracted is not deducted from the prime's 8(a) revenue. SBA notes that the language in § 124.510(b) is not new, and as such, no changes to this language were proposed. Nonetheless, several commenters expressed their opposition to a District Director's ability to waive compliance with the limitations on subcontracting in certain circumstances and disagreed with the time period used to determine compliance with the limitations on subcontracting for 8(a) procurements. In response to these comments, SBA is eliminating this provision. SBA has not received any comments or input indicating this provision has benefited specific 8(a) concerns. In addition, this exemption is not based on any statutory authority. Thus, in accordance with the intent of the section to make the performance requirements uniform across all programs, SBA is eliminating paragraphs (c)(4) and (c)(5) of § 124.510.

SBA proposed to revise § 125.15(a)(3) and (b)(3), which address the requirements for an SDVO SBC to submit an offer on a contract. SBA proposed to revise paragraph (a)(3) to state that a concern that represents itself as an SDVO SBC must also represent that it will comply with the limitations on subcontracting, as set forth in § 125.6, as part of its initial offer, including price. SBA proposed to revise paragraph (b)(3) to state that joint ventures that represent themselves as an SDVO SBC joint venture must comply with the applicable limitations on subcontracting, as set forth in § 125.6. SBA received no comments related to these paragraphs and as such is adopting the language as proposed.

HUBZone Program

SBA also proposed to revise § 126.200(b)(6). This paragraph addresses the requirements that a concern must meet in order to receive SBA's certification as a qualified HUBZone SBC. Paragraphs (b)(6) and (d) are repetitive as both address the requirement that HUBZone SBCs must comply with the relevant performance of work requirements. SBA proposed to delete paragraph (d) and revise paragraph (b)(6). Specifically, proposed paragraph (b)(6) would state that the concern must represent in its application for the HUBZone program that it will comply with the applicable limitations on subcontracting requirements with respect to any procurement that it receives as a qualified HUBZone SBC. SBA received one comment related to proposed § 126.200(b)(6), which was a request to clarify whether a HUBZone similarly situated entity subcontractor must meet the 35% residency requirement for HUBZone program participation. In response, SBA clarifies that a HUBZone similarly situated entity subcontractor must be able to qualify for the prime HUBZone procurement in order to be considered a similarly situated entity. This means that it must also be HUBZone certified and be considered small for the NAICS code assigned to its subcontract. SBA is adopting the language in § 126.200(b)(6) as proposed.

SBA proposed to revise § 126.700 in its entirety, including revision of paragraph (a) and removal of paragraphs (b) and (c). This section currently addresses the performance of work requirements for HUBZone contracts. SBA proposed to retitle the section to include the terminology "limitations on subcontracting"; remove references to the "performance of work" requirements; and replace the deleted text with a reference to 13 CFR 125.6 for guidance on the applicable limitations on subcontracting for HUBZone contracts. SBA believes that it would be confusing to have each section of SBA's set-aside program regulations repeat the relevant limitations on subcontracting, and therefore SBA proposed to list all of the limitations on subcontracting requirements at § 125.6 and provide references to that section in each of the various small business government contracting and business development program sections. SBA did not receive comments related to this paragraph and is adopting the language as proposed.

SBA proposed to revise § 127.504(b), which addresses the requirements a concern must satisfy to submit an offer for an EDWOSB or WOSB requirement. Paragraph (b) states that the concern must meet the performance of work requirements in § 125.6. SBA proposed to revise this paragraph to replace the reference to "performance of work requirement" with "limitations on subcontracting." SBA did not receive comments related to this paragraph and is adopting the language as proposed.

SBA proposed to revise § 127.506(d), which addresses the requirements that a joint venture must satisfy in order to submit an offer for an EDWOSB or WOSB requirement. SBA proposed to revise this paragraph by replacing the reference to "performance of work requirement" with "limitations on subcontracting." SBA did not receive comments related to this paragraph and is adopting the language as proposed.

Subcontracting Plans

Section 1653 of the NDAA, as codified at 15 U.S.C. 637(d) (Section 8(d) of the Small Business Act), addresses amendments to the requirements for subcontracting plans. Section 1653(a)(2) of the NDAA states that the head of the contracting agency shall ensure that the agency collects, reports, and reviews data on the extent to which the agency's contractors meet the goals and objectives set out in their subcontracting plans. SBA proposed to add a new § 125.3(f)(8) to incorporate these provisions. SBA received three comments on this addition. Two were positive, and the one negative comment felt that the statutory language may be too burdensome for contracting officers and prime contractors. This final rule adopts the proposed language.

Section 1653(a)(3) of the NDAA modifies the Small Business Act to state that a contractor that fails to provide a written corrective action plan after receiving a marginal or unsatisfactory rating for its subcontracting plan performance or that fails to make a good faith effort to comply with its subcontracting plan will not only be in material breach of the contract, but such failure shall also be considered in any past performance evaluation of the contractor. SBA proposed to revise § 125.3(f)(5) to incorporate this language. SBA also proposed adding a new sentence to the end of § 125.3(f)(5), which would prescribe the process for a Commercial Market Representative (CMR) to report firms that are found to have acted fraudulently or in bad faith to the SBA's Area Director for the Office of Government Contracting Area Office where the firm is headquartered. SBA received eight comments on this proposed change. One of the comments wanted SBA to ensure that there was a definitive statement that contracting officers shall take into consideration ratings on performance of past subcontracting plans when evaluating past performance. SBA agrees with this position, but believes that it is already clear in the regulatory text. The provisions of the NDAA make clear that contracting officers shall take into consideration previous performance of its subcontracting plans. The remaining comments were generally supportive of the changes. Two negative comments were related to requirements of the Act itself which can be modified or changed only by another Act passed of Congress. Thus, SBA is not making any changes to the proposed rule.

Section 1653(a)(4) of the NDAA modifies the Small Business Act to state that contracting agencies also perform evaluations of a prime contractor's subcontracting plan performance, and that SBA's evaluations of subcontracting plan performance are completed as a supplement to the contracting agency's review. SBA proposed to revise § 125.3(f)(1) to incorporate this language. SBA did not receive any comments on this change and will be keeping the proposed language.

Section 1653(a)(5) of the NDAA requires that if an SBC is identified as a potential subcontractor in a proposal, offer, bid or subcontracting plan in connection with a covered Federal contract, the prime contractor shall notify the SBC prior to such identification. Section 1653(a)(5) also requires that the Administrator establish a reporting mechanism that allows potential subcontractors to report fraudulent activity or bad faith behavior by a prime contractor with respect to a subcontracting plan. SBA proposed to incorporate these requirements in new § 125.3(c)(8) and (9). SBA received eight comments on these changes. Several comments asked for clarification on how the notification requirements can be met. SBA believes that rule is very clear. There are two requirements: First that the notification is in writing; and second that it be given to the party in question. Ensuring that it is in writing and has been received is the responsibility of the contractor. SBA is not making any changes with regard to this requirement. Several commenters requested that additional requirements be added that would also require notification to SBA or another government party that the contract has provided the written notification that is required. SBA does not believe that this additional step is required by the statute, or that the additional burden on contractors is necessary to ensure compliance with the other provision.

Affiliation

SBA proposed to make changes to its regulations in § 121.103(f), which defines affiliation based on an identity of interest. Paragraph 121.103(f) discusses the circumstances where an identity of interest between two or more persons leads to affiliation among those persons and their interests are aggregated. SBA proposed to add additional guidance on how to analyze affiliation due to an identity of interest. SBA believed that the additional clarifications will better enable concerned parties to understand and determine when they are affiliated.

SBA proposed to divide paragraph (f) into two paragraphs. Paragraph (f)(1) will include further clarification regarding the type of relationships between individuals that will create a presumption of affiliation due to an identity of interest. Specifically, SBA proposed to insert language clarifying that a presumption of affiliation exists for firms that conduct business with each other and are owned and controlled by persons who are married couples, parties to a civil union, parents and children, and siblings. SBA proposed that the presumption would be a rebuttable presumption. The proposed rule is based on size appeal decisions that have been issued interpreting this regulation.

SBA received several comments with respect to identity of interest based on family relationships. Four commenters thought that the list of family relationships was not exhaustive enough and should include all relationships, such as grandparents and cousins. These commenters believed that all familial relationships should create the presumption, and that other information such as estrangement or distance could be used in rebuttal. Two commenters agreed that the clarity SBA was providing was helpful and agreed with the changes. Two commenters did not believe that affiliation should ever be found based on familial relationships.

As noted in SBA's proposed rule, the enumerated family relationships are relationships in which SBA's Office of Hearings and Appeals (OHA) has consistently found affiliation in the past. *See Size Appeal of Knight Networking & Web Design, Inc.*, SBA No. SIZ–5561 (2014); *Size Appeal of RGB Group, Inc.*, SBA No. SIZ–5351 (2012); and *Size Appeal of Jenn-Kans, Inc.*, SBA No. SIZ–5114 (2010). The rule is intended to take this knowledge and precedent and provide it in the rule itself in order to make compliance and understanding easier for small businesses. SBA believes the proposed rule accurately encompassed the precedential history of SBA size decisions and that it will be beneficial in providing some clarity to small businesses. Thus, SBA is adopting the language in (f)(1) in the final rule.

In paragraph (f)(2), SBA proposed adopting a presumption of affiliation based on economic dependence. Specifically, if a firm derives 70% or more of its revenue from another firm over the previous fiscal year, SBA will presume that the one firm is economically dependent on the other and, therefore, that the two firms are affiliated. Currently there is no fixed percentage that SBA applies when evaluating this criteria. However, OHA size appeal decisions have provided the 70% figure as a guide. SBA believes that providing clarity on this issue will be beneficial for firms, and will enable them to more easily identify their affiliates. Further, this presumption is rebuttable, such as when a firm is new or a start-up and has only received a few contracts or subcontracts. Often new firms will not have as many partners and clients, and therefore will normally be generating more of their revenue from a much smaller number of other companies. Over time these firms should diversify and become less dependent on one entity.

SBA received 26 comments on this section. Several commenters pointed out that SBA should use a three-year time frame rather than a one year time frame because SBA already uses a three-year time frame when averaging annual receipts for size purposes. SBA agrees, and has adopted a three-year measuring period in the final rule. Several commenters were also concerned that this new rule and its interpretation could adversely impact "start-ups" that have low revenues to begin with and fewer contracts. SBA does not want this new rule to negatively impact start-ups or any other company that operates in a unique industry. That is precisely why this is not a bright line rule, but a rebuttable presumption. This rebuttable presumption is based on OHA cases, and OHA has in fact rebutted the presumption in appropriate circumstances. For instance, OHA has held that the mechanical application of the economic dependence rule is erroneous when a startup has only been able to secure one or two contracts. *Size Appeal of Argus & Black, Inc.*, SBA No. SIZ–5204 (2011). In addition, OHA has held that where the receipts from an alleged affiliate are not enough to sustain a firm's business operations, and the firm is able to look to other financial support from its Alaska Native Corporation (ANC) affiliates to remain viable, the fact that the firm received more than 70% of its receipts from its alleged affiliate is not sufficient to establish affiliation. *Size Appeal of Olgoonik Solutions LLC,* SBA No SIZ–5669 (2015). In response to the comments and in an effort to provide greater clarity, this final rule specifies that the presumption of affiliation based on economic dependence may be rebutted by a showing that despite the contractual relations with another concern, the concern at issue is not solely dependent on that other concern. In addition, SBA has provided examples in the regulatory text for clarification. Several comments asked for a specific list of acceptable rebuttals, and one commenter requested that Tribally-owned firms be granted an explicit exception. SBA does not believe that providing a list of acceptable rebuttals may have the unintended consequence of limiting the types of rebuttals that are acceptable. Instead SBA believes that firms should be permitted to make any arguments and provide any evidence that they believe demonstrates that no affiliation should be found. In addition, SBA has clarified that SBA will not find affiliation between two concerns owned by an Indian Tribe, ANC, Native Hawaiian Organization (NHO) or Community Development Corporation (CDC) based solely on the contractual relations of the two concerns. The Small Business Act and SBA's rules clearly recognize that ANC, NHO, CDC, and Tribally-owned concerns will provide assistance to sister entities, and it does not make sense to find affiliation based on economic dependence among such concerns.

Joint Ventures

SBA proposed to amend § 121.103(h) to broaden the exclusion from affiliation for small business size status to allow two or more small businesses to joint venture for any procurement without being affiliated with regard to the performance of that procurement requirement. Currently, in addition to the exclusion from affiliation given to an 8(a) protégé firm that joint ventures with its SBA-approved mentor for any small business procurement, there is also an exclusion from affiliation between two or more small businesses that seek to perform a small business procurement as a joint venture where the procurement is bundled or large (*i.e.*, greater than half the size standard for a procurement assigned a NAICS code with a receipts-based size standard and greater than $10 million for a procurement assigned a NAICS code with an employee-based size standard). SBA proposed to remove the restriction on the type of contract for which small businesses may joint venture without being affiliated for size determination purposes. SBA proposed this change for several reasons. First, the proposed change would encourage more small business joint venturing, in furtherance of the government-wide goals for small business participation in federal contracting. Second, the proposed change is consistent with the results from the Small Business Teaming Pilot Program indicating there is a need for more small business opportunities and firms have greater success on small contracts than on large contracts. Third, this proposed change would better align with the new provisions of the NDAA governing the limitations on subcontracting, which allow a small business prime contractor to subcontract to as many similarly situated subcontractors as desired. If a small business prime contractor can subcontract significant portions of that contract to one or more other small businesses and, in doing so, meet the performance of work requirements for small business (without being affiliated with the small business subcontractor(s)), it is SBA's view that similar treatment should be afforded joint ventures—so that a joint venture of two or more small businesses could perform a procurement requirement as a small business when each is individually small.

SBA received 43 comments on this section. The comments were overwhelmingly supportive of the change. As such, this final rule adopts the proposed language requiring only that each member of a joint venture individually qualify as small. Several commenters also suggested that SBA provide additional guidance regarding joint ventures that perform contracts as similarly situated entities. This final rule clarifies that a joint venture of two or more business concerns may submit an offer as a small business for a Federal procurement, subcontract or sale so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract.

Calculation of Annual Receipts

SBA proposed to amend § 121.104, which explains how SBA calculates annual receipts when determining the size of a business concern. SBA proposed to clarify that receipts include all income, and the only exclusions from income are the ones specifically listed in paragraph (a). It was always SBA's intent to include all income, except for the listed exclusions; however, SBA has found that some business concerns misinterpreted the current definition of receipts to exclude passive income. SBA's proposed change clarifies the intent to include all income, including passive income, in the calculation of receipts.

SBA received 15 comments on this section. The majority of the comments were supportive. Several commenters believed that SBA should not count certain expenses to subcontractors as revenue. The comments were asking SBA to consider new exemptions. The proposed change was not intended to fundamentally change the meaning of SBA's regulation, but merely ensure that small businesses are aware that all income is considered including passive income. Thus, SBA is adopting the proposed language in this final rule.

Recertification

SBA proposed to amend § 121.404(g)(2)(ii) by adding new paragraph (D) to clarify when recertification of size is required following the merger or acquisition of a firm that submitted an offer as a small business concern. Paragraph (D) clarifies that if the merger or acquisition occurs after offer but prior to award, the offeror must recertify its size to the contracting officer prior to award.

SBA received twenty-one comments on this proposed change. Nine commenters supported SBA's proposal. One commenter asked that SBA go further and specifically allow contracting officers to refuse novation of contacts if an acquisition or merger occurs within 90 days of an award. Seven commenters strongly opposed SBA's proposed changes. Two commenters argued that there should be a 30 day period prior to award requirement. SBA does not know how this could be implemented given that offerors do not know when an award announcement will be made. One commenter suggested SBA should only require recertification if the merger or sale involves a large business. One commenter was confused about whether this rule would negate the requirement to certify at the time at offer.

SBA is adopting the proposed language in this final rule. For several years SBA's rules have required recertification in connection with a contract when there is an acquisition or merger involving the prime contractor. SBA never intended for the recertification requirement to not apply based on when the acquisition or merger occurred. If recertification is required for an existing contract, it should be required for a pending contract. An agency's receipt of small business credit should not depend on whether an acquisition or merger occurs the day before award of contract.

Small Business Innovation Research and Small Business Technology Transfer Programs

SBA proposed to amend § 121.702(a)(2), which addresses an ownership and control element of the eligibility requirements for the Small Business Innovation and Research (SBIR) Program, to clarify that a single venture capital operating company (VCOC), hedge fund, or private equity firm may own more than 50% of an SBIR awardee if that single VCOC, hedge fund, or private equity firm qualifies as a small business concern which is more than 50% directly owned and controlled by individuals who are citizens or permanent resident aliens of the United States.

Section 121.702(a) establishes the SBIR program eligibility requirements related to ownership and control. Awardees that satisfy any of the permissible ownership and control structures discussed in § 121.702(a) must also satisfy all of the size and affiliation requirements stated in § 121.702(c). Section 121.702(a)(1)(ii) allows an SBIR awardee to be majority-owned by multiple VCOCs, hedge funds, or private equity firms. Section 121.702(a)(2) prohibits ownership by a single VCOC, hedge fund, or private equity firm that owns a majority of the concern. This paragraph has been misread because it does not account for the scenario where an awardee is majority-owned by a single VCOC, hedge fund, or private equity firm that is itself another small business concern and therefore qualifies as an allowable ownership structure under § 121.702(a)(1)(i). To clarify this point, SBA is amending § 121.702(a)(2) to explain that it is permissible for an SBIR awardee to be majority owned by a single VCOC, hedge fund, or private equity firm if that firm meets the definition of a small business concern under this section and is more than 50% directly owned and controlled by individuals who are citizens or permanent resident aliens of the United States. SBA did not receive any comments related to this proposed change and is adopting the change as proposed.

Size Protests

SBA proposed to amend § 121.1001(a), which specifies who may initiate a size status protest. Small businesses and contracting officers have found the current language to be unclear because it contains a double negative, stating that any offeror that has not been eliminated for reasons not related to size may file a size protest. The intent is to provide standing to any offeror that is in line or consideration for award, but to not provide standing for an offeror that has been found to be non-responsive, technically unacceptable or outside of the competitive range.

In addition, the proposed rule added a new § 121.1001(b)(11) that would authorize the SBA's Director, Office of Government Contracting, to initiate a formal size determination in connection with eligibility for the SDVO SBC and the WOSB/EDWOSB programs. This change is needed to correct an oversight that did not authorize such requests for size determinations when those programs were added to SBA's regulations.

SBA received 16 comments on this change. All commenters were supportive; however one commenter believed that the protests should be allowed for firms outside the competitive range. SBA disagrees. A firm outside of the competitive range is not eligible for award and does not have standing. However, SBA and the contracting officer may file a size protest at any time, so any firm, including those that do not have standing, may bring information pertaining to the size of the apparent successful offeror to the attention of SBA and/or the contracting officer for their consideration.

North American Industry Classification System Code Appeals

SBA sought comments on the appropriate timeline for filing a NAICS code appeal. SBA's regulations currently state that, "[a]n appeal from a contracting officer's NAICS code or size standard designation must be served and filed within 10 calendar days after the issuance of the solicitation or amendment affecting the NAICS code or size standard." 13 CFR 121.1103(b)(1). SBA received 23 comments on this issue. Most of the comments were supportive of SBA's current timing. Several commenters recommended other changes that SBA could make. Based on the comments, SBA is not altering the timeliness rules for NAICS code appeals.

Nonmanufacturer Rule

SBA proposed to clarify that the limitations on subcontracting and the nonmanufacturer rule (NMR) do not apply to small business set-aside contracts valued between $3,000 and $150,000. The statutory nonmanufacturer rule, which is contained in Section 8(a)(17) of the Small Business Act, 15 U.S.C. 637(a)(17), is an exception to the limitations on subcontracting (LOS). It provides that a concern may not be denied the opportunity to compete for a supply contract under Sections 8(a) and 15(a) of the Small Business Act simply because it is not the actual manufacturer or processor of the product. Section 8(a)(17) of the Small Business Act does not, however, also reference Section 15(j) of the Small Business Act, the authority requiring small business set-aside contracts valued between $3,500 and $150,000. Thus, there is no specific statutory requirement that the nonmanufacturer rule apply to the mandated small business set-asides between $3,500 and $150,000. SBA believes that not applying the nonmanufacturer rule to small business set-asides valued between $3,500 and $150,000 will spur small business competition by making it more likely that a contracting officer will set aside an acquisition for small business concerns because the agency will not have to request a waiver from SBA where there are no small business manufacturers available. In order to request a waiver, an agency must provide SBA with the solicitation and market research on whether manufacturers exist and wait several weeks for SBA to verify the data and grant the waiver. Without a waiver, an offeror on a small business set-aside supply contract must either manufacture at least 50% of the product on its own or supply the product of a small business made in the United States. Many waiver requests below $150,000 are for name brand items (*e.g.*, computers) that are clearly not made by small businesses in the United States. Whether an agency can procure name brand items is not within the jurisdiction of SBA. The contracting officer must make that determination, which can be protested by interested parties.

SBA received 28 comments on this issue, of which 19 were supportive. The non-supportive comments believed that this change would drastically hurt small business manufacturers because most of their contracts fell within the exemption range. One commenter maintained that the proposed rule would hurt resellers by increasing competition among resellers. Given the support for the change and the consistency between the FAR and SBA's regulations that this creates, SBA is adopting the proposed language in the final rule.

Several commenters asked for additional clarity on several discrete issues. Specifically, commenters sought guidance on how the NMR applies to multiple item procurements generally, and especially to procurements with multiple NAICS codes, and how the NMR and LOS apply when a multiple-item procurement contains items manufactured by multiple large and small businesses.

Further, commenters requested guidance on the treatment of rentals with regard to the NMR and LOS. In order to provide more clarity SBA is proposing new language in § 121.406(b)(4) and (e). SBA has also provided several additional examples to demonstrate how the rules should be applied. The final rule clarifies that rental services are not supplies. SBA bases this clarification on the NAICS code and NAICS manual, as well as the FAR and other government contracting statutes which indicate that renting an item is not the same thing as buying an item. SBA is also adding additional language to clarify how to apply the NMR, LOS, and size standards, to address comments concerning how to apply the various rules when the government acquires more than one item in a single procurement. SBA believes this language will more clearly state how the various regulations interact in that situation.

The intent is for the NMR, LOS, and size standards to operate in conjunction with each other in a manner consistent with all of SBA's regulations. Therefore SBA believes that the proper way to calculate LOS requirements with regard to a contract that contains waived item(s)/small business item(s) is that the value of the waived item(s) are subtracted from the total and the prime contractor is responsible for meeting the requirements on the remainder. SBA has added several examples to § 125.6(a) to help explain how this should be calculated in practice.

SBA proposed to amend § 121.1203 to require that contracting officers notify potential offerors of any waivers, whether class waivers or contract specific waivers, that will be applied to the procurement. SBA proposed that this notification of the application of a waiver be contained in the solicitation itself. Without notification that a waiver is being applied by the contracting officer, potential offerors cannot reasonably anticipate what if any requirements they must meet in order to perform the procurement in accordance with SBA's regulations. SBA believed that providing notice of waivers in the solicitation will provide all potential offerors with the information needed to decide if they should submit an offer.

SBA also proposed to amend § 121.1203, regarding waivers to the nonmanufacturer rule. SBA proposed to amend § 121.1203(a) to specifically authorize SBA to grant a waiver to the nonmanufacturer rule for an individual contract award after a solicitation has been issued, provided the contracting officer agrees to provide all potential offerors additional time to respond. SBA believes that a waiver may be appropriate even after a solicitation has been issued, but wants to ensure that all potential offerors would be fully apprised of any waiver granted after the solicitation is issued and have a reasonable amount of time (depending upon the complexities of the procurement) to adjust their offers accordingly.

SBA proposed in § 121.1203(b) to allow some waivers to be granted after the contract has been awarded. SBA believed that granting post-award waivers, when additional items that are eligible for a waiver are sought through in-scope modifications, is reasonable and will increase the use of the waiver process and allow firms to compete for contracts in a manner consistent with SBA regulations. SBA envisioned these types of post-award waivers to be given in situations similar to the example contained in the proposed regulation—where a need for an item occurs after contract award, where requiring the item would be an in-scope modification, and where the item is one for which a waiver would have been granted if sought prior to contract award.

SBA received 32 comments on the changes being made to NMR waivers. Many commenters supported the proposed language regarding notification by the contracting officer. Commenters universally agreed that being informed of the application of a waiver as early as possible would be beneficial to small business contractors. Several comments requested additional guidance or a firmer statement about the application of waivers granted on base contract to orders issued against that contract. Contract specific waivers are granted for individual items and the waiver is good for the entirety of that contract with regard to the item that was waived. Therefore, the waiver would by necessity also include all orders for supplies under that contract that would require the item(s) that had been waived.,

SBA proposed to add a new § 121.1203(d), dealing with waivers to the nonmanufacturer rule for the purchase of software. SBA proposed to address whether the nonmanufacturer rule should apply to certain software that can readily be treated as an item and not a service. SBA proposed to treat this type of software as a product or item of supply rather than a service. SBA believed that this change will bring SBA's regulations in line with how most buyers already perceive these types of software. Readily available software that is generally available to both the public and private sector unmodified is almost universally perceived to be a supply item, even though SBA's regulations currently would treat the production of any type of software as a service. SBA proposed to allow for certain types of software to be eligible for waivers of the nonmanufacturer rule. SBA proposed to grant waivers on software that meet criteria that establishes that the Government is buying something that is more like a product or supply item than a service. Clearly, when the Government seeks to award a contract to a business concern to create, design, customize or modify custom software, that should be classified as a service requirement and the activity will remain classified in a service NAICS code to which the nonmanufacturer rule does not apply. For a service procurement set aside for small business, the prime (together with one or more similarly situated subcontractors) would have to perform the required percentage of work. On the other hand, when the government buys certain types of unmodified software that is generally available to both the public and the government from a business concern, SBA believes that the contracting officer should classify the requirement as a commodity or supply. If the procurement is a supply contract set aside for small business, the prime contractor, together with any similarly situated subcontractors, would have to perform at least 50% of the cost of manufacturing the software, unless SBA granted a waiver of the nonmanufacturer rule.

Commenters generally supported SBA's proposed language. One commenter stated that given this new approach by SBA, that some software products should be granted class waivers. Once this rule is effective, the public will be able to request a class waiver for a software item under SBA's existing regulations for class waivers. 13 CFR 121.1204. Many commenters requested drastic changes to SBA's current waiver procedures. Specifically, the commenters requested that a waiver requested by CO be assumed granted if SBA does not respond in specified period of time. Two commenters requested language that would allow bidders to assume pending waiver requests are granted when they submit offers. SBA cannot adopt these recommendations. The Small Business Act is clear that only SBA may grant a waiver of the NMR. These comments reinforce SBA's belief that the current situation has caused too much confusion for small contractors, and SBA is adopting the proposed language in this final rule, which requires the contracting officer to request a contract specific waiver prior to issuing the solicitation, and provide notification of the application of the waiver in the solicitation itself.

One commenter complained that the application of the software waiver is not also being applied to cloud based solutions. It is SBA's current position that cloud based solutions are services that are being provided to the government and not supplies that the government is purchasing, and therefore the NMR is not applicable. In our view, cloud based solutions are similar to rentals, which, as discussed above, SBA treats as services. Several commenters asked SBA to address the issue of NMR waiver requests when the issue is contractor requesting a brand name item. The decision to request a brand name item is in the discretion of the contracting officer. However, the Small Business Act does not exclude brand name item acquisitions from the statutory NMR waiver requirements.

In the proposed rule, SBA proposed to amend § 121.201 by adding a footnote to NAICS code 511210, Software Publishers, explaining that this is the proper NAICS code to use when the government is purchasing software that is eligible for a waiver of the NMR. The 2012 NAICs manual provides the following definition of this industry:

> This industry comprises establishments primarily engaged in computer software publishing or publishing and reproduction. Establishments in this industry carry out operations necessary for producing and distributing computer software, such as designing, providing documentation, assisting in installation, and providing support services to software purchasers. These establishments may design, develop, and publish, or publish only.

SBA believes that this accurately reflects the type of companies that would be producing and supplying the government with the type of software eligible for a waiver. Further, SBA proposed that the procurement of this type of software would be treated by SBA as a supply requirement, and therefore the NMR would apply, as long as the acquisition meets all of the requirements of the rule. SBA reiterates that the custom design or modification of software for the government will generally continue to be treated as a service. Therefore, if the software being acquired requires any custom modifications in order to meet the needs of the government, it is not eligible for a waiver of the NMR because the contractor is performing a service, not providing a supply.

SBA proposed to amend § 121.406(b)(5) to make a technical correction. Section 121.406(b) addresses how a nonmanufacturer may qualify as a small business concern for a requirement to provide a manufactured product or other supply item. Currently, paragraph (b)(5) states that the SBA's Administrator or designee may waive the requirement set forth in paragraph (b)(1)(iii) of this section, that requires nonmanufacturers to supply the end item of a small business manufacturer, processor or producer made in the United States. The citation to paragraph (b)(1)(iii) is incorrect and as such, SBA proposed to amend this paragraph to include the correct citation, paragraph (b)(1)(iv). SBA also proposed to make this correction in the size standard proposed rule for industries with employee based size standards that are not part of manufacturing, wholesale trade or retail trade. 79 FR 53646 (Sept. 10, 2014). The size standard rule was finalized on January 26, 2016 (81 FR 4436), and SBA has removed the proposed amendment from this final rule.

In addition, in the proposed rule SBA proposed to amend § 121.406(b)(7) to clarify that SBA's waiver of the NMR has no effect on requirements external to the Small Business Act which involve domestic sources of supply, such as the Buy American Act and the Trade Agreements Act.

In order to clarify whether the NMR applies, or whether a general or specific waiver is attached to a procurement, SBA proposed to add a new § 121.1206 to require contracting officers to receive specific waivers prior to posting a solicitation, and also to provide notification to all potential offerors of any waivers that will be applied (whether class or specific) to a given solicitation. As noted above, commenters were generally in favor of this provision, and SBA is adopting the proposed language in the final rule.

Adverse Impact and Construction Requirements

SBA proposed to amend § 124.504 to clarify when a procurement for construction services is considered a new requirement. This section generally addresses when SBA must conduct an adverse impact analysis for the award of an 8(a) contract. SBA is not required to perform an adverse impact analysis for new requirements. Currently, paragraph (c)(1)(ii)(B) states that "Construction contracts, by their very nature (*e.g.,* the building of a specific structure), are deemed new requirements." SBA proposed to clarify the definition of "new requirement" for construction contracts by specifying that generally, the building of a specific structure is considered a new requirement. However, recurring indefinite delivery or indefinite quantity (IDIQ) procurements for construction services are not considered new. SBA has found that agencies have misinterpreted the current language of § 124.504(c)(1)(ii)(B) to consider recurring IDIQ construction services procurements as new. SBA intended to clarify that such recurring requirements are not considered new. A determination of whether a construction contract is recurring or new will have to be made on a case by case basis, and there is a process in place that allows SBA to file an appeal with the procuring agency when there is a disagreement.

SBA received 11 comments on this proposed change, and most were supportive. The non-supportive comments seemed to have misunderstood how the rule will be implemented. There is no presumption that IDIQ task or delivery order contracts are not new. The rule is neutral and the determination will be made on a case-by-case basis, subject to SBA's statutory authority to appeal. Thus, SBA is adopting the proposed language in the final rule.

Certificate of Competency

SBA proposed to amend § 125.5(f), which addresses SBA's review of an application for the Certificate of Competency (COC) program. SBA proposed to insert new § 125.5(f)(3) to address how SBA should review an application for a COC based on a finding of non-responsibility due to financial capacity where the applicant is the apparent successful offeror for an IDIQ task order or contract. SBA frequently receives inquiries regarding the application of the COC process for financial capacity to the potential award of an IDIQ contract. SBA intended to clarify this process by proposing changes to § 125.5(f). The proposed changes provided that the SBA's Area Director will consider the firm's maximum financial capacity and if such COC is issued, it will be for a specific amount that serves as the limit of the firm's financial capacity for that contract. The contracting officer cannot deny the firm the award of an order or contract on the basis of financial incapacity if the firm has not reached the financial maximum identified by the Area Director.

SBA received two comments on this issue. One was supportive, and one thought it added too much of a burden to small businesses. SBA believes this rule will address certain issues that arise for IDIQ contracts. This rule provides clarity to the process and ensures that small business participation is maximized. Further, the COC process is statutory and provides SBA with the ability to review non-responsibility determinations concerning small businesses. Thus, SBA is adopting the proposed language in the final rule.

SBA is also revising 13 CFR 121.408(a), which provides the size procedures for the COC program. The revision is a technical correction. This paragraph currently references 13 CFR 121.1009 to explain how SBA would initiate a formal size determination; however, § 121.1009 relates to the process SBA uses to make a formal size determination. The correct regulatory reference is to 13 CFR 121.1001(b)(3)(ii), which explains how SBA initiates a formal size determination for the COC program.

SBA is also revising 13 CFR 121.409, to remove the second sentence. This section addresses the size standard that applies in an unrestricted or full and open procurement. The second sentence states that in an unrestricted procurement, the small business concern must supply a domestically furnished product. That may or may not be true, depending on whether or how the Buy American Act or the Trade Agreements Act apply to the procurement. The Small Business Act does not impose such a requirement on full and open or unrestricted procurements.

Compliance With Executive Orders 12866, 13563, 13175, 12988, 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612) Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is a "significant" regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. However, this is not a major rule under the Congressional Review Act, 5 U.S.C. 801, *et seq.*

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

The final rule implements Sections 1621, 1623, 1651, 1652, 1653 and 1654 of the National Defense Authorization Act of 2013, Public Law 112–239, 126 Stat. 1632, January 2, 2013; 15 U.S.C. 637(d), 644(l), 645, 657s. In addition, it makes several other changes needed to clarify ambiguities in or remedy perceived problems with the current regulations. These changes should make SBA's regulations easier to use and understand.

2. What are the potential benefits and costs of this regulatory action?

These final regulations should benefit small business concerns by allowing small business concerns to use similarly situated subcontractors in the performance of a set-aside contract, thereby expanding the capacity of the small business prime contractor and potentially enabling the firm to compete for and obtain larger contracts. It also strengthens the small business subcontracting provisions, which may result in more subcontract awards to small business concerns. The final rule also seeks to address or clarify issues that are ambiguous or subject to dispute, thereby providing clarity to contracting officers as well as small business concerns. SBA does not believe that this rule will impose new costs on small business concerns.

3. What are the alternatives to this final rule?

Many provisions in this final rule are required to implement statutory provisions, thus there are no alternatives for these regulations. SBA did consider various options in the proposed rule, including a requirement that small business concerns that want to team with similarly situated entities enter into a written agreement, certify that they will comply and report on compliance. However, in response to the public comments discussed in the **SUPPLEMENTARY INFORMATION**, SBA is not requiring a written agreement or compliance reporting in this rule. Contracting officers in their discretion may require compliance reporting. Further, firms agree to comply with the limitations on subcontracting when they submit an offer. Thus, an additional certification is unnecessary. SBA also considered whether it should not waive the NMR for the purchase of software. However, this would inhibit the ability of agencies to set aside contracts for commodity software for small business concerns.

Executive Order 13563

This executive order directs agencies to, among other things: (a) afford the public a meaningful opportunity to comment through the Internet on proposed regulations, with a comment period that should generally consist of not less than 60 days; (b) provide for an "open exchange" of information among government officials, experts, stakeholders, and the public; and (c) seek the views of those who are likely to be affected by the rulemaking, even before issuing a notice of proposed rulemaking. As far as practicable or relevant, SBA considered these requirements in developing this rule, as discussed below.

1. *Did the agency use the best available techniques to quantify anticipated present and future costs when responding to Executive Order 12866 (e.g., identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes)?*

To the extent possible, the agency utilized the most recent data available in the Federal Procurement Data System—Next Generation, System for Award Management and Electronic Subcontracting Reporting System.

2. *Public participation: Did the agency: (a) Afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally consist of not less than 60 days; (b) provide for an "open exchange" of information among government officials, experts, stakeholders, and the public; (c) provide timely online access to the rulemaking docket on Regulations.gov; and (d) seek the views of those who are likely to be affected by rulemaking, even before issuing a notice of proposed rulemaking?*

The proposed rule had a 60-day comment period and was posted on *www.regulations.gov* to allow the public to comment meaningfully on its provisions. In addition, the agency extended the comment period in response to public requests to do so. SBA then submitted the final rule to the Office of Management and Budget for interagency review. Further, as discussed in the **SUPPLEMENTARY INFORMATION**, SBA conducted tribal consultations where these rules were discussed.

3. *Flexibility: Did the agency identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public?*

Yes, the final rule implements statutory provisions and will provide clarification to rules that were requested by agencies and stakeholders. On many occasions, SBA made changes to language or provided additional examples, in response to public comment. The final rule will make it easier for small businesses to contract with the Federal government.

Executive Order 12988

This action meets applicable standards set forth set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This action does not have any retroactive or preemptive effect.

Executive Order 13132

SBA has determined that this final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

For the purposes of the Paperwork Reduction Act, SBA has determined that this rule would not impose new government-wide reporting requirements on small business concerns.

Regulatory Flexibility Act, 5 U.S.C. 601–612

According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, when an agency issues a rulemaking, it must prepare a regulatory flexibility analysis to address the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. The RFA defines "small entity" to include "small businesses," "small organizations," and "small governmental jurisdictions." This final rule concerns various aspects of SBA's contracting programs, as such the rule relates to small business concerns but would not affect "small organizations" or "small governmental jurisdictions" because those programs generally apply only to "business concerns" as defined by SBA's regulations, in other words, to small businesses organized for profit. "Small organizations" or "small governmental jurisdictions" are non-profits or governmental entities and do not generally qualify as "business concerns" within the meaning of SBA's regulations.

There are approximately 300,000 concerns listed as small business concerns in the System for Award Management (SAM) in at least one industry category that could potentially be impacted by the implementation of the NDAA 2013 contracting provisions. However, we cannot say with any certainty how many will be impacted because we do not know how many of these concerns will team together to submit offers, nor do we know how many will be awarded contracts as teams. The number of firms participating in teaming will be lower than the number of firms registered in SAM. However, as discussed elsewhere in this rule, including section 2 of the Regulatory Impact Analysis, the final rule does not impose significant new compliance or other costs on small business concerns. Under current law, firms must adhere to certain performance requirements when performing set-aside contracts. SBA expects that costs now incurred by small business concerns as a result of ambiguous or indefinite regulations will be eliminated or reduced. Clarifying the confusion and uncertainty concerning the applicability of SBA's contracting regulations would also reduce the time burden on the small business contracting community and therefore make it easier for them to contract with the Federal Government. In sum, the final rule would not have a disparate impact on small businesses and would increase their opportunities to participate in Federal Government contracting without imposing any additional costs. For the reasons discussed, SBA certifies that this final rule would not have a significant economic impact on a substantial number of small business concerns.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

13 CFR Part 124

Administrative practice and procedure, Government procurement, Hawaiian Natives, Indians—business and finance, Minority businesses, Reporting and recordkeeping requirements, Technical assistance.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance, Veterans.

13 CFR Part 126

Administrative practice and procedure, Government procurement, Penalties, Reporting and Recordkeeping requirements, Small businesses.

13 CFR Part 127

Government contracts, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons stated in the preamble, SBA amends 13 CFR parts 121, 124, 125, 126, and 127 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for 13 CFR part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

■ 2. Amend § 121.103 by
■ a. Revising paragraph (b)(9);
■ b. Adding paragraphs (f)(1) and (2);
■ c. Adding a new final sentence to paragraph (h) introductory text; and
■ d. Revising paragraphs (h)(3)(i) and (h)(4) to read as follows:

§ 121.103 How does SBA determine affiliation?

* * * * *

(b) * * *

(9) In the case of a solicitation for a bundled contract, a small business contractor may enter into a Small Business Teaming Arrangement with one or more small business subcontractors and submit an offer as a small business without regard to affiliation, so long as each team member is small for the size standard assigned to the contract or subcontract. The agency shall evaluate the offer in the same manner as other offers with due consideration of the capabilities of the subcontractors.

* * * * *

(f) * * *

(1) Firms owned or controlled by married couples, parties to a civil union, parents, children, and siblings are presumed to be affiliated with each other if they conduct business with each other, such as subcontracts or joint ventures or share or provide loans, resources, equipment, locations or employees with one another. This presumption may be overcome by showing a clear line of fracture between the concerns. Other types of familial relationships are not grounds for affiliation on family relationships.

(2) SBA may presume an identity of interest based upon economic dependence if the concern in question derived 70% or more of its receipts from another concern over the previous three fiscal years.

(i) This presumption may be rebutted by a showing that despite the contractual relations with another concern, the concern at issue is not solely dependent on that other concern, such as where the concern has been in business for a short amount of time and has only been able to secure a limited number of contracts.

(ii) A business concern owned and controlled by an Indian Tribe, ANC, NHO, CDC, or by a wholly-owned entity of an Indian Tribe, ANC, NHO, or CDC, is not considered to be affiliated with another concern owned by that entity based solely on the contractual relations between the two concerns.

Example 1 to paragraph (f). Firm A has been in business for 9 months and has two contracts. Contract 1 is with Firm B and is valued at $900,000 and Contract 2 is with Firm C and is valued at $200,000. Thus, Firm B accounts for over 70% of Firm A's receipts. Absent other connections between A and B, the presumption of affiliation between A and B is rebutted because A is a new firm.

Example 2 to paragraph (f). Firm A has been in business for five years. It has over 200 contracts. Of that 200, 195 are with Firm B, and the value of those contracts is greater than 70% of the revenue over the previous three years. In this case, SBA would most likely find the two firms affiliated unless the firm could provide some other compelling rebuttal to the very strong presumption that it should be considered affiliated with Firm B.

* * * * *

(h) * * * For purposes of this section, contract refers to prime contracts, and any subcontract in which the joint venture is treated as a similarly situated entity as the term is defined in part 125 of this chapter.

* * *

(3) *Exception to affiliation for certain joint ventures.* (i) A joint venture of two or more business concerns may submit an offer as a small business for a Federal procurement, subcontract or sale so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract.

* * * * *

(4) A contractor and its ostensible subcontractor are treated as joint venturers, and therefore affiliates, for size determination purposes. An ostensible subcontractor is a subcontractor that is not a similarly situated entity, as that term is defined in § 125.1 of this chapter, and performs primary and vital requirements of a contract, or of an order, or is a subcontractor upon which the prime contractor is unusually reliant. All aspects of the relationship between the prime and subcontractor are considered, including, but not limited to, the terms of the proposal (such as contract management, technical responsibilities, and the percentage of subcontracted work), agreements between the prime and subcontractor (such as bonding assistance or the teaming agreement), and whether the subcontractor is the incumbent contractor and is ineligible to submit a proposal because it exceeds the applicable size standard for that solicitation.

* * * * *

■ 3. Amend § 121.104 by revising the introductory text in paragraph (a) to read as follows:

§ 121.104 How does SBA calculate annual receipts?

(a) *Receipts* means all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. Generally, receipts are considered "total income" (or in the case of a sole proprietorship "gross income") plus "cost of goods sold" as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other sole proprietorships). Receipts do not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, investment income, and employee-based costs such as payroll taxes, may not be excluded from receipts.

* * * * *

■ 4. Amend § 121.201 by adding footnote 20 to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

Footnotes

* * * * *

20. *NAICS code 511210*—For purposes of Government procurement, the purchase of software subject to potential waiver of the nonmanufacturer rule pursuant to § 121.1203(d) should be classified under this NAICS code.

§ 121.402 [Amended]

■ 5. Amend § 121.402(d) by removing the term "paragraph (d)" and adding in its place "paragraph (e)".

■ 6. Amend § 121.404 as follows:

■ a. Revise paragraph (f);

■ b. Revise first sentence of paragraph (g)(2)(i); and

■ c. Add paragraph (g)(2)(ii)(D) to read as follows:

§ 121.404 When is the size status of a business concern determined?

* * * * *

(f) For purposes of architect-engineering, design/build or two-step sealed bidding procurements, a concern must qualify as small as of the date that it certifies that it is small as part of its initial bid or proposal (which may or may not include price).

(g) * * *

(2)(i) In the case of a merger, sale, or acquisition, where contract novation is not required, the contractor must, within 30 days of the transaction becoming final, recertify its small business size status to the procuring agency, or inform the procuring agency that it is other than small. * * *

(ii) * * *

(D) If the merger, sale or acquisition occurs after offer but prior to award, the offeror must recertify its size to the contracting officer prior to award.

* * * * *

■ 7. Amend § 121.406 as follows:

■ a. Revise the section heading;

■ b. Revise paragraph (a) introductory text;

■ c. Add a sentence to the end of paragraph (b)(4);

■ d. Revise paragraphs (b)(7) and (d); and

■ e. Redesignate paragraph (e) as paragraph (f) and add new paragraph (e) to read as follows:

§ 121.406 How does a small business concern qualify to provide manufactured products or other supply items under a small business set-aside, service-disabled veteran-owned small business, HUBZone, WOSB or EDWOSB, or 8(a) contract?

(a) *General.* In order to qualify as a small business concern for a small business set-aside, service-disabled veteran-owned small business set-aside or source contract, HUBZone set-aside or sole source contract, WOSB or EDWOSB set-aside or sole source contract, 8(a) set-aside or sole source contract, partial set-aside, or set aside of an order against a multiple award contract to provided manufactured products or other supply items, an offeror must either:

* * * * *

(b) * * *

(4) * * * The rental of an item(s) is a service and should be treated as such in the application of the nonmanufacturer rule and the limitation on subcontracting.

* * * * *

(7) SBA's waiver of the nonmanufacturer rule means that the firm can supply the product of any size business without regard to the place of manufacture. However, SBA's waiver of the nonmanufacturer rule has no effect on requirements external to the Small Business Act which involve domestic sources of supply, such as the Buy American Act or the Trade Agreements Act.

* * * * *

(d) The performance requirements (limitations on subcontracting) and the nonmanufacturer rule do not apply to small business set-aside acquisitions with an estimated value between $3,500 and $150,000.

(e) *Multiple item acquisitions.* (1) If at least 50% of the estimated contract value is composed of items that are manufactured by small business concerns, then a waiver of the nonmanufacturer rule is not required. There is no requirement that each and every item acquired in a multiple-item procurement be manufactured by a small business.

(2) If more than 50% of the estimated contract value is composed of items manufactured by other than small concerns, then a waiver is required. SBA may grant a contract specific waiver for one or more items in order to ensure that at least 50% of the value of the products to be supplied by the nonmanufacturer comes from domestic small business manufacturers or are subject to a waiver.

(3) If a small business is both a manufacturer of item(s) and a nonmanufacturer of other item(s), the manufacturer size standard should be applied.

* * * * *

■ 8. Amend § 121.408 by revising paragraph (a) to read as follows:

§ 121.408 What are the size procedures for SBA's Certificate of Competency Program?

(a) A firm which applies for a COC must file an "Application for Small Business Size Determination" (SBA Form 355). If the initial review of SBA Form 355 indicates the applicant, including its affiliates, is small for purposes of the COC program, SBA will process the application for COC. If the review indicates the applicant, including its affiliates is other than small SBA will initiate a formal size determination as set forth in § 121.1001(b)(3)(ii). In such a case, SBA will not further process the COC application until a formal size determination is made.

* * * * *

§ 121.409 [Amended]

■ 9. Amend § 121.409 by removing the second sentence.

■ 10. Amend § 121.702 by revising paragraph (a)(2) to read as follows:

§ 121.702 What size and eligibility standards are applicable to the SBIR and STTR programs?

* * * * *

(a) * * *

(2) No single venture capital operating company, hedge fund, or private equity firm may own more than 50% of the concern unless that single venture capital operating company, hedge fund, or private equity firm qualifies as a small business concern that is more than 50% directly owned and controlled by individuals who are citizens or permanent resident aliens of the United States.

* * * * *

■ 11. Amend § 121.1001 as follows:

■ a. Revise paragraphs (a)(1)(i) and (a)(2)(i); and

■ b. Redesignate paragraph (b)(11) as paragraph (b)(12) and add a new paragraph (b)(11).

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) * * * (1) * * *

(i) Any offeror that the contracting officer has not eliminated from consideration for any procurement-related reason, such as non-responsiveness, technical unacceptability or outside of the competitive range;

* * * * *

(2) * * *

(i) Any offeror that the contracting officer has not eliminated from consideration for any procurement related reason, such as non-responsiveness, technical unacceptability or outside of the competitive range;

* * * * *

(b) * * *

(11) In connection with eligibility for the SDVO SBC and the WOSB/EDWSOB programs, the Director, Office of Government Contracting, may initiate a formal size determination.

* * * * *

■ 12. Revise § 121.1203 to read as follows:

§ 121.1203 When will a waiver of the Nonmanufacturer Rule be granted for an individual contract?

(a) Where appropriate, SBA will generally grant waivers for an individual contract or order prior to the issuance of a solicitation, or, where a solicitation has been issued, when the contracting officer provides all potential offerors additional time to respond.

(b) SBA may grant a waiver after contract award, where the contracting officer has determined that the modification is within the scope of the contract and the agency followed the regulations prior to issuance of the solicitation and properly and timely requested a waiver for any other items under the contract, where required.

Example to paragraph (b): The Government seeks to buy spare parts to fix Item A. After conducting market research, the government determines that Items B, C, and D that are being procured may be eligible for waivers and requests and receives waivers from SBA for those items prior to issuing the solicitation. After the contract is awarded, the Government determines that it will need additional spare parts to fix Item A. The Government determines that adding the additional parts as a modification to the original contract is within scope. The contracting officer believes that one of the additional parts is also eligible for a waiver from SBA, and requests the waiver at the time of the modification. If all other criteria are met, SBA would grant the waiver, even though the contract has already been awarded.

(c) An individual waiver for an item in a solicitation will be approved when the SBA Director, Office of Government Contracting, reviews and accepts a contracting officer's determination that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications of a solicitation, including the period of performance.

(d) *Waivers for the purchase of software.* (1) SBA may grant an individual waiver for the procurement of software provided that the software being sought is an item that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and the item:

(i) Has been sold, leased, or licensed to the general public, or has been offered for sale, lease, or license to the general public;

(ii) Is sold in substantial quantities in the commercial marketplace; and

(iii) Is offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace.

(2) If the value of services provided related to the purchase of a supply item that meets the requirements of paragraph (d)(1) of this section exceeds the value of the item itself, the procurement should be identified as a service procurement, even if the services are provided as part of the same license, lease, or sale terms. If a contracting officer cannot make a determination of the value of services being provided, SBA will assume that the value of the services is greater than the value of items or supplies, and will not grant a waiver.

(3) Subscription services, remote hosting of software, data, or other applications on servers or networks of a party other than the U.S. Government are considered by SBA to be services and not the procurement of a supply item. Therefore SBA will not grant waivers of the nonmanufacturer rule for these types of services.

■ 13. Amend § 121.1204 by revising paragraphs (b)(1)(ii) and (iii) to read as follows:

§ 121.1204 What are the procedures for requesting and granting waivers?

* * * * *

(b) * * * (1) * * *

(ii) The proposed solicitation number, NAICS code, dollar amount of the procurement, and a brief statement of the procurement history;

(iii) A determination by the contracting officer that no small business manufacturer or processor reasonably can be expected to offer a product or products meeting the specifications (including period of performance) required by a particular solicitation. Include a narrative describing market research and supporting documentation; and

* * * * *

■ 14. Add § 121.1206 to read as follows:

§ 121.1206 How will potential offerors be notified of applicable waivers?

(a) Contracting officers must provide written notification to potential offerors of any waivers being applied to a specific acquisition, whether it is a class waiver or a contract specific waiver. This notification must be provided at the time a solicitation is issued. If the notification is provided after a solicitation is issued, the contracting officer must provide potential offerors a reasonable amount of additional time to respond to the solicitation.

(b) If a contracting officer does not provide notice, and additional reasonable time for responses when required, then the waiver cannot be applied to the solicitation. This applies to both class waivers and individual waivers.

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

■ 15. The authority citation for 13 CFR part 124 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d), 644 and Pub. L. 99–661, Pub. L. 100–656, sec.1207, Pub. L. 101–37, Pub. L. 101–574, section 8021, Pub. L. 108–87, and 42 U.S.C. 9815.

■ 16. Amend § 124.504 by revising paragraph (c)(1)(ii)(B) to read as follows:

§ 124.504 What circumstances limit SBA's ability to accept a procurement for award as an 8(a) contract?

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(B) Procurements for construction services (*e.g.,* the building of a specific structure) are generally deemed to be new requirements. However, recurring indefinite delivery or indefinite quantity task or delivery order construction services are not considered new (*e.g.,* a recurring procurement requiring all construction work at base X).

* * * * *

■ 17. Revise § 124.510 to read as follows:

§ 124.510 What limitations on subcontracting apply to an 8(a) contract?

(a) To assist the business development of Participants in the 8(a) BD program, there are limitations on the percentage of an 8(a) contract award amount that may be spent on subcontractors. The prime contractor recipient of an 8(a) contract must comply with the limitations on subcontracting at § 125.6 of this chapter.

(b) Indefinite delivery and indefinite quantity contracts. In order to ensure that the required limitations on subcontracting requirements on an indefinite delivery or indefinite quantity 8(a) award are met by the Participant, the Participant cannot subcontract more than the required percentage to subcontractors that are not similarly situated entities for each performance period of the contract (*i.e.*, during the base term and then during each option period thereafter). However, the contracting officer, in his or her discretion, may require the Participant to meet the applicable limitation on subcontracting or comply with the nonmanufacturer rule for each order.

(1) This includes Multiple Award Contracts that were set-aside or partially set-aside for 8(a) BD Participants.

(2) For orders that are set aside for eligible 8(a) Participants under full and open contracts or reserves, the Participant must meet the applicable limitation on subcontracting requirement and comply with the nonmanufacturer rule, if applicable, for each order.

■ 18. Amend § 124.513 by revising paragraph (b) to read as follows:

§ 124.513 Under what circumstances can a joint venture be awarded an 8(a) contract?

* * * * *

(b) *Size of concerns to an 8(a) joint venture.* (1) A joint venture of at least one 8(a) Participant and one or more other business concerns may submit an offer as a small business for a competitive 8(a) procurement, or be awarded a sole source 8(a) procurement, so long as each concern is small under the size standard corresponding to the NAICS code assigned to the procurement.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, a joint venture between a protégé firm and its approved mentor (*see* § 124.520) will be deemed small provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the contract and has not reached the dollar limits set forth in § 124.519.

* * * * *

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 19. The authority citation for 13 CFR part 125 is revised to read as follows:

Authority: 15 U.S.C. 632(p), (q); 634(b)(6), 637, 644, 657(f), 657q; and 657s.

■ 20. Amend § 125.1 by:

■ a. Removing paragraphs (f), (g), (h), (m), and (u);

■ b. Removing all alphabetical paragraph designations and placing the definitions in alphabetical order;

■ c. Adding in alphabetical order a definition for *Similarly situated entity* to read as follows:

§ 125.1 What definitions are important to SBA's Government Contracting Programs?

* * * * *

Similarly situated entity is a subcontractor that has the same small business program status as the prime contractor. This means that: For a HUBZone requirement, a subcontractor that is a qualified HUBZone small business concern; for a small business set-aside, partial set-aside, or reserve a subcontractor that is a small business concern; for a SDVO small business requirement, a subcontractor that is a self-certified SDVO SBC; for an 8(a) requirement, a subcontractor that is an 8(a) certified Program Participant; for a WOSB or EDWOSB contract, a subcontractor that has complied with the requirements of part 127. In addition to sharing the same small business program status as the prime contractor, a similarly situated entity must also be small for the NAICS code that the prime contractor assigned to the subcontract the subcontractor will perform.

* * * * *

■ 21. Amend § 125.2 as follows:

■ a. Revise paragraph (b)(1)(i)(A);

■ b. Add paragraph (b)(1)(i)(F);

■ c. Revise the introductory text to paragraph (b)(1)(ii);

■ d. Revise paragraph (b)(1)(iii)(C);

■ e. Add paragraphs (b)(1)(iv) and (v);

■ f. Remove paragraph (b)(2) and redesignate paragraph (b)(3) as paragraph (b)(2);

■ g. Revise redesignated paragraph (b)(2);

■ h. Amend paragraph (c)(1)(iv) by removing the term "and" at the end of the last sentence;

■ i. Amend paragraph (c)(1)(v) by removing the "." at the end of the last sentence and adding in its place ";".

■ j. Add paragraph (c)(1)(vi); and

■ k. Add paragraph (c)(1)(vii) to read as follows.

§ 125.2 What are SBA's and the procuring agency's responsibilities when providing contracting assistance to small businesses?

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) SBA has PCRs who are generally located at Federal agencies and buying activities which have major contracting programs. At the SBA's discretion, PCRs will review all acquisitions that are not totally set aside for small businesses to determine whether a set-aside or sole source award to a small business under one of SBA's programs is appropriate and to identify alternative strategies to maximize the participation of small businesses in the procurement. PCRs also advocate for the maximum practicable utilization of small business concerns in Federal contracting, including by advocating against the consolidation or bundling of contract requirements, as defined in § 125.1, and reviewing any justification provided by the agency for consolidation or bundling. This review includes acquisitions that are Multiple Award Contracts where the agency has not set-aside all or part of the acquisition or reserved the acquisition for small businesses. It also includes acquisitions where the agency has not set-aside orders placed against Multiple Award Contracts for small business concerns.

* * * * *

(F) PCRs also advocate competitive procedures and recommend the breakout for competition of items and requirements which previously have not been competed when appropriate. They may appeal the failure by the buying activity to act favorably on a recommendation in accord with the appeal procedures in paragraph (b)(2) of this section. PCRs also review restrictions and obstacles to competition and make recommendations for improvement.

(ii) *PCR recommendations.* The PCR must recommend to the procuring activity alternative procurement methods that would increase small business prime contract participation if a PCR believes that a proposed procurement includes in its statement of work goods or services currently being performed by a small business and is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely; will render small business prime contract participation unlikely (*e.g.*, ensure geographical preferences are justified); or is for construction and seeks to package or consolidate discrete construction projects. If a PCR does not believe a bundled or consolidated requirement is necessary or justified the PCR shall advocate against the consolidation or bundling of such requirement and recommend to the procuring activity alternative procurement methods which would increase small business prime contract participation. Such alternatives may include:

* * * * *

(iii) * * *

(C) Recommending that the small business subcontracting goals be based on total contract dollars in addition to goals based on a percentage of total subcontracted dollars;

* * * * *

(iv) PCRs will consult with the agency OSDBU regarding agency decisions to convert an activity performed by a small business concern to an activity performed by a Federal employee.

(v) PCRs may receive unsolicited proposals from small business concerns and will transmit those proposals to the agency personnel responsible for reviewing such proposals. The agency personnel shall provide the PCR with information regarding the disposition of such proposal.

(2) *Appeals of PCR recommendations.* In cases where there is disagreement between a PCR and the contracting officer over the suitability of a particular acquisition for a small business set-aside, partial set-aside or reserve, whether or not the acquisition is a bundled, substantially bundled or consolidated requirement, the PCR may initiate an appeal to the head of the contracting activity. If the head of the contracting activity agrees with the contracting officer, SBA may appeal the matter to the Secretary of the Department or head of the agency. The time limits for such appeals are set forth in FAR subpart 19.5 (48 CFR 19.5).

(c) * * * (1) * * *

(i) * * *

(vi) Provide opportunities for the participation of small business concerns during acquisition planning processes and in acquisition plans; and

(vii) Invite the participation of the appropriate Director of Small and Disadvantaged Business Utilization in acquisition planning processes and provide that Director with access to acquisition plans.

* * * * *

■ 22. Amend § 125.3 as follows:
■ a. Add paragraphs (c)(8) and (9);
■ b. Revise the first sentence of paragraph (f)(1);
■ c. Revise paragraph (f)(5); and
■ d. Add paragraph (f)(8) to read as follows:

§ 125.3 What types of subcontracting assistance are available to small businesses?

* * * * *

(c) * * *

(8) A prime contractor that identifies a small business by name as a subcontractor in a proposal, offer, bid or subcontracting plan must notify those subcontractors in writing prior to identifying the concern in the proposal, bid, offer or subcontracting plan.

(9) Anyone who has a reasonable basis to believe that a prime contractor or a subcontractor may have made a false statement to an employee or representative of the Federal Government, or to an employee or representative of the prime contractor, with respect to subcontracting plans must report the matter to the SBA Office of Inspector General. All other concerns as to whether a prime contractor or subcontractor has complied with SBA regulations or otherwise acted in bad faith may be reported to the Government Contracting Area Office where the firm is headquartered.

* * * * *

(f) * * * (1) A prime contractor's performance under its subcontracting plan is evaluated by means of on-site compliance reviews and follow-up reviews, as a supplement to evaluations performed by the contracting agency, either on a contract-by-contract basis or, in the case of contractors having multiple contracts, on an aggregate basis. * * *

* * * * *

(5) Any contractor that fails to comply with paragraph (f)(4) of this section, or any contractor that fails to demonstrate a good-faith effort, as set forth in paragraph (d) of this section:

(i) May be considered for liquidated damages under the procedures in 48 CFR 19.705–7 and the clause at 52.219–16; and

(ii) Shall be in material breach of such contract or subcontract, and such failure to demonstrate good faith must be considered in any past performance evaluation of the contractor. This action shall be considered by the contracting officer upon receipt of a written recommendation to that effect from the CMR. The CMR's recommendation must include a copy of the compliance report and any other relevant correspondence or supporting documentation. Furthermore, if the CMR has a reasonable basis to believe that a contractor has made a false statement to an employee or representative of the Federal Government, or to an employee or representative of the prime contractor, the CMR must report the matter to the SBA Office of Inspector General. All other concerns as to whether a prime contractor or subcontractor has complied with SBA regulations or otherwise acted in bad faith may be reported to the Area Government Contracting Office where the firm is headquartered.

* * * * *

(8) The head of the contracting agency shall ensure that:

(i) The agency collects and reports data on the extent to which contractors of the agency meet the goals and objectives set forth in subcontracting plans; and

(ii) The agency periodically reviews data collected and reported pursuant to paragraph (f)(8)(i) of this section for the purpose of ensuring that such contractors comply in good faith with the requirements of this section.

* * * * *

■ 23. Amend § 125.5 as follows:
■ a. Revise paragraph (b)(1)(ii);
■ b. Remove paragraphs (b)(1)(iii), (iv) and (v); and
■ c. Add paragraph (f)(3) to read as follows:

§ 125.5 What is the Certificate of Competency Program?

* * * * *

(b) * * * (1) * * *

(ii) To be eligible for a COC, an offeror must qualify as a small business under the applicable size standard in accordance with part 121 of this chapter, and must have agreed to comply with the applicable limitations on subcontracting and the nonmanufacturer rule, where applicable.

* * * * *

(f) * * *

(3) Where a contracting officer finds a concern to be non-responsible for reasons of financial capacity on an indefinite delivery or indefinite quantity task or delivery order contract, the Area Director will consider the firm's maximum financial capacity. If the Area Director issues a COC, it will be for a specific amount that is the limit of the firm's financial capacity for that contract. The contracting officer may subsequently determine to exceed the amount, but cannot deny the firm award of an order or contract on financial grounds if the firm has not reached the financial maximum the Area Director identified in the COC letter.

* * * * *

■ 24. Revise § 125.6 to read as follows:

§ 125.6 What are the prime contractor's limitations on subcontracting?

(a) *General.* In order to be awarded a full or partial small business set-aside contract with a value greater than $150,000, an 8(a) contract, an SDVO SBC contract, a HUBZone contract, a WOSB or EDWOSB contract pursuant to part 127 of this chapter, with a value greater than $150,000, a small business concern must agree that:

(1) In the case of a contract for services (except construction), it will not pay more than 50% of the amount paid by the government to it to firms that are not similarly situated. Any work that a similarly situated subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded.

(2)(i) In the case of a contract for supplies or products (other than from a nonmanufacturer of such supplies), it will not pay more than 50% of the amount paid by the government to it to firms that are not similarly situated. Any work that a similarly situated subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(ii) In the case of a contract for supplies from a nonmanufacturer, it will supply the product of a domestic small business manufacturer or processor, unless a waiver as described in § 121.406(b)(5) of this chapter is granted.

(A) For a multiple item procurement where a waiver as described in § 121.406(b)(5) of this chapter has not been granted for one or more items, more than 50% of the value of the products to be supplied by the nonmanufacturer must be the products of one or more domestic small business manufacturers or processors.

(B) For a multiple item procurement where a waiver as described in § 121.406(b)(5) of this chapter is granted for one or more items, compliance with the limitation on subcontracting requirement will not consider the value of items subject to a waiver. As such, more than 50% of the value of the products to be supplied by the nonmanufacturer that are not subject to a waiver must be the products of one or more domestic small business manufacturers or processors.

(C) For a multiple item procurement, the same small business concern may act as both a manufacturer and a nonmanufacturer.

Example 1 to paragraph (a)(2). A contract calls for the supply of one item valued at $1,000,000. The market research shows that there are no small business manufacturers that produce this item, and the contracting officer seeks and is granted a contract specific waiver for this item. In this case, a small business nonmanufacturer may supply an item manufactured by a large business.

Example 2 to paragraph (a)(2). A contract is for $1,000,000 and calls for the acquisition of 10 items. Market research shows that nine of the items can be sourced from small business manufacturers and one item is subject to an SBA class waiver. The projected value of the item that is waived is $10,000. Therefore, at least 50% of the value of the items not subject to a waiver, or 50% of $990,000, must be supplied by one or more domestic small business manufacturers, and the prime small business nonmanufacturer may act as a manufacturer for one or more items.

Example 3 to paragraph (a)(2). A contract is for $1,000,000 and calls for the acquisition of 10 items. Market research shows that only four of these items are manufactured by small businesses. The value of the items manufactured by small business is estimated to be $400,000. The contracting officer seeks and is granted waivers on the other six items. Therefore, the value of the items granted waivers is excluded from the calculation and at least 50% of $400,000 would have to be spent by the prime contractor on items it manufactures itself, or on items manufactured by one or more other small business concerns.

Example 4 to paragraph (a)(2). A contract is for $1,000,000 and calls for the acquisition of 10 items. Market research shows that eight of the items can be sourced from small business manufacturers, and the estimated value of these items is $800,000. At least 50% of the value of the contract (*i.e.,* at least $500,000) will be spent on items manufactured by one or more small business concerns. As such, the contracting officer is not required to request contract specific waivers for the other two items valued at $200,000. In this case, the prime contractor can meet the requirement by sourcing some of the items from small businesses manufacturers and some from large businesses without a waiver and still satisfy the requirement.

(3) In the case of a contract for general construction, it will not pay more than 85% of the amount paid by the government to it to firms that are not similarly situated. Any work that a similarly situated subcontractor further subcontracts will count towards the 85% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(4) In the case of a contract for special trade contractors, no more than 75% of the amount paid by the government to the prime may be paid to firms that are not similarly situated. Any work that a similarly situated subcontractor further subcontracts will count towards the 75% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(b) *Mixed contracts.* Where a contract combines services and supplies, the contracting officer shall select the appropriate NAICS code as prescribed in § 121.402(b) of this chapter. The contracting officer's selection of the applicable NAICS code is determinative as to which limitation on subcontracting and performance requirement applies. In no case shall the requirements of paragraph (a)(1) and (a)(2) of this section both apply to the same contract. The relevant limitation on subcontracting in paragraph (a)(1) or (a)(2) of this section shall apply only to that portion of the contract award amount.

Example 1 to paragraph (b). A procuring agency is acquiring both services and supplies through a small business set-aside. The total value of the requirement is $3,000,000, with the supply portion comprising $2,500,000, and the services portion comprising $500,000. The contracting officer appropriately assigns a manufacturing NAICS code to the requirement. The cost of material is $500,000. Thus, because the services portion of the contract and the cost of materials are excluded from consideration, the relevant amount for purposes of calculating the performance of work requirement is $2,000,000 and the prime and/or similarly situated entities must perform at least $1,000,000 and the prime contractor may not subcontract more than $1,000,000 to non-similarly situated entities.

Example 2 to paragraph (b). A procuring agency is acquiring both services and supplies through a small business set-aside. The total value of the requirement is $3,000,000, with the services portion comprising $2,500,000, and the supply portion comprising $500,000. The contracting officer appropriately assigns a services NAICS code to the requirement. Thus, because the supply portion of the contract is excluded from consideration, the relevant amount for purposes of calculating the performance of work requirement is $2,500,000 and the prime and/or similarly situated entities must perform at least $1,250,000 and the prime contractor may not subcontract more than $1,250,000 to non-similarly situated entities.

(c) *Subcontracts to similarly situated entities.* A small business concern prime contractor that receives a contract listed in paragraph (a) of this section and spends contract amounts on a subcontractor that is a similarly situated entity shall not consider those subcontracted amounts as subcontracted for purposes of determining whether the small business concern prime contractor has violated paragraph (a) of this section, to the extent the subcontractor performs the work with its own employees. Any work that the similarly situated subcontractor does not perform with its own employees shall be considered subcontracted SBA will also exclude a subcontract to a similarly situated entity from consideration under the ostensible subcontractor rule (§ 121.103(h)(4)).

Example 1 to paragraph (c): An SDVO SBC sole source contract is awarded in the total amount of $500,000 for hammers. The prime contractor is a manufacturer and subcontracts 51% of the total amount received, less the cost of materials ($100,000) or $204,000, to an SDVO SBC subcontractor that manufactures the hammers in the U.S. The prime contractor does not violate the limitation on subcontracting requirement because the amount subcontracted to a similarly situated entity (less the cost of materials) is excluded from the limitation on subcontracting calculation.

Example 2 to paragraph (c): A competitive 8(a) BD contract is awarded in the total amount of $10,000,000 for janitorial services. The prime contractor subcontracts $8,000,000 of the janitorial services to another 8(a) BD certified firm. The prime contractor does not violate the limitation on subcontracting for services because the amount subcontracted to a similarly situated entity is excluded from the limitation on subcontracting.

Example 3 to paragraph (c): A WOSB set-aside contract is awarded in the total amount of $1,000,000 for landscaping services. The prime contractor subcontracts $500,001 to an SDVO SBC subcontractor that is not also a WOSB under the WOSB program. The prime contractor is in violation of the limitation on subcontracting requirement because it has subcontracted more than 50% of the contract amount to an SDVO SBC subcontractor, which is not considered similarly situated to a WOSB prime contractor.

(d) *HUBZone procurement for commodities.* In the case of a HUBZone contract for the procurement of agricultural commodities, a HUBZone SBC may not purchase the commodity from a subcontractor if the subcontractor will supply the commodity in substantially the final form in which it is to be supplied to the Government.

(e) *Determining compliance with applicable limitation on subcontracting.* The period of time used to determine compliance for a total or partial set-aside contract will be the base term and then each subsequent option period. For an order set aside under a full and open contract or a full and open contract with reserve, the agency will use the period of performance for each order to determine compliance unless the order is competed among small and other-than-small businesses (in which case the subcontracting limitations will not apply).

(1) The contracting officer, in his or her discretion, may require the concern to comply with the applicable limitations on subcontracting and the nonmanufacturer rule for each order awarded under a total or partial set-aside contract.

(2) Compliance will be considered an element of responsibility and not a component of size eligibility.

(3) Work performed by an independent contractor shall be considered a subcontract, and may count toward meeting the applicable limitation on subcontracting where the independent contractor qualifies as a similarly situated entity.

(f) *Inapplicability of limitations on subcontracting.* The limitations on subcontracting do not apply to:

(1) Small business set-aside contracts with a value greater than $3,500 but not $150,000, or

(2) Subcontracts (except where a prime is relying on a similarly situated entity to meet the applicable limitations on subcontracting).

(g) *Request to change applicable limitation on subcontracting.* SBA may use different percentages if the Administrator determines that such action is necessary to reflect conventional industry practices among small business concerns that are below the numerical size standard for businesses in that industry group. Representatives of a national trade or industry group or any interested SBC may request a change in subcontracting percentage requirements for the categories defined by six digit industry codes in the North American Industry Classification System (NAICS) pursuant to the following procedures:

(1) *Format of request.* Requests from representatives of a trade or industry group and interested SBCs should be in writing and sent or delivered to the Director, Office of Government Contracting, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416. The requester must demonstrate to SBA that a change in percentage is necessary to reflect conventional industry practices among small business concerns that are below the numerical size standard for businesses in that industry category, and must support its request with information including, but not limited to:

(i) Information relative to the economic conditions and structure of the entire national industry;

(ii) Market data, technical changes in the industry and industry trends;

(iii) Specific reasons and justifications for the change in the subcontracting percentage;

(iv) The effect such a change would have on the Federal procurement process; and

(v) Information demonstrating how the proposed change would promote the purposes of the small business, 8(a), SDVO, HUBZone, WOSB, or EDWOSB programs.

(2) *Notice to public.* Upon an adequate preliminary showing to SBA, SBA will publish in the **Federal Register** a notice of its receipt of a request that it considers a change in the subcontracting percentage requirements for a particular industry. The notice will identify the group making the request, and give the public an opportunity to submit information and arguments in both support and opposition.

(3) *Comments.* SBA will provide a period of not less than 30 days for public comment in response to the **Federal Register** notice.

(4) *Decision.* SBA will render its decision after the close of the comment period. If SBA decides against a change, SBA will publish notice of its decision in the **Federal Register**. Concurrent with the notice, SBA will advise the requester of its decision in writing. If SBA decides in favor of a change, SBA will propose an appropriate change to this part.

(h) *Penalties.* Whoever violates the requirements set forth in paragraph (a) of this section shall be subject to the penalties prescribed in 15 U.S.C. 645(d), except that the fine shall be treated as the greater of $500,000 or the dollar amount spent, in excess of permitted levels, by the entity on subcontractors. A party's failure to comply with the spirit and intent of a subcontract with a similarly situated entity may be considered a basis for debarment on the grounds, including but not limited to, that the parties have violated the terms of a Government contract or subcontract pursuant to FAR 9.406–2(b)(1)(i) (48 CFR 9.406–2(b)(1)(i)).

* * * * *

■ 25. Amend § 125.15 by revising paragraphs (a)(3), (b)(1), and (b)(3) to read as follows:

§ 125.15 What requirements must an SDVO SBC meet to submit an offer on a contract?

(a) * * *

(3) It will comply with the limitations on subcontracting requirements set forth in § 125.6;

* * * * *

(b) * * *

(1) *Size of concerns to an SDVO SBC joint venture.* A joint venture of at least one SDVO SBC and one or more other business concerns may submit an offer as a small business for a competitive SDVO SBC procurement, or be awarded a sole source SDVO contract, so long as each concern is small under the size standard corresponding to the NAICS code assigned to the procurement.

* * * * *

(3) *Limitations on subcontracting.* For any SDVO contract, the joint venture must comply with the applicable

limitations on subcontracting required by § 125.6.

* * * * *

§ 125.20 [Amended]

■ 26. Amend § 125.20 as follows:

■ a. In paragraph (b)(1), remove "$5,500,000" and add in its place "$6,000,000"; and

■ b. In paragraph (b)(2), remove "$3,000,000" and add in its place "$3,500,000".

* * * * *

§ 125.26 [Amended]

■ 27. Amend § 125.26 by removing the phrase "Associate Administrator for Government Contracting" and adding in its place the phrase "Director, Office of Government Contracting" in paragraph (b).

PART 126—HUBZONE PROGRAM

■ 28. The authority citation for 13 CFR part 126 continues to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p), 644, and 657a.

■ 29. Amend § 126.200 by revising paragraph (b)(6) and removing paragraph (d) to read as follows:

§ 126.200 What requirements must a concern meet to receive SBA certification as a qualified HUBZone SBC?

* * * * *

(b) * * *

(6) *Subcontracting.* The concern must represent, as provided in the application, that it will comply with the applicable limitations on subcontracting requirements in connection with any procurement that it receives as a qualified HUBZone SBC, as set forth in § 126.5 and § 126.700.

* * * * *

■ 30. Amend § 126.601 by revising paragraph (f) to read as follows:

§ 126.601 What additional requirements must a HUBZone SBC meet to bid on a contract?

* * * * *

(f) A qualified HUBZone SBC may submit an offer on a HUBZone contract for supplies as a nonmanufacturer if it meets the requirements of the nonmanufacturer rule set forth at § 121.406 of this chapter.

* * * * *

■ 31. Revise § 126.700 to read as follows:

§ 126.700 What are the limitations on subcontracting requirements for HUBZone contracts?

A prime contractor receiving an award as a qualified HUBZone SBC must meet the limitations on subcontracting requirements set forth in § 125.6 of this chapter.

PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

■ 32. The authority citation for 13 CFR part 127 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 637(m), and 644.

■ 33. Amend § 127.504 by revising paragraph (b) to read as follows:

§ 127.504 What additional requirements must a concern satisfy to submit an offer on an EDWOSB or WOSB requirement?

* * * * *

(b) The concern must also meet the applicable limitations on subcontracting requirements as set forth in § 125.6 of this chapter.

■ 34. Amend § 127.506 by revising paragraphs (a) and (d) to read as follows:

§ 127.506 May a joint venture submit an offer on an EDWOSB or WOSB requirement?

* * * * *

(a) *Size of concerns.* A joint venture of at least one WOSB or EDWOSB and one or more other business concerns may submit an offer as a small business for a competitive WOSB or EDWOSB procurement so long as each concern is small under the size standard corresponding to the NAICS code assigned to the procurement;

* * * * *

(d) The joint venture must comply with the limitations on subcontracting, as required by § 125.6 of this chapter;

* * * * *

Maria Contreras-Sweet,
Administrator.

[FR Doc. 2016–12494 Filed 5–27–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–2859; Directorate Identifier 2016–NE–04–AD; Amendment 39–18536; AD 2016–11–09]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Turbomeca S.A. Arriel 1D and 1D1 turboshaft engines with a pre-modification (mod) TU357 gas generator module (M03), installed. This AD requires removing the pre-modification (mod) TU357 gas generator module (M03) and replacing with a part eligible for installation. This AD was prompted by reports of divergent rubbing between the piston shaft small diameter labyrinth and the rear bearing support. We are issuing this AD to prevent failure of the labyrinth seal and engine, in-flight shutdown, and loss of control of the helicopter.

DATES: This AD becomes effective July 5, 2016.

ADDRESSES: For service information identified in this final rule, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; fax: 33 (0)5 59 74 45 15. You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–2859; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Philip Haberlen, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7770; fax: 781–238–7199; email: *philip.haberlen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on March 1, 2016 (81 FR 10544). The NPRM proposed to correct an unsafe condition for the specified products.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2016–0009, dated January 13, 2016 (referred to hereinafter as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Some cases of divergent rubbing between the piston shaft small diameter labyrinth and the rear bearing support have been reported.
>
> This condition, if not corrected, could lead to an uncommanded engine in-flight shutdown.

You may obtain further information by examining the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–2859.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (81 FR 10544, March 1, 2016).

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD as proposed.

Related Service Information

Turbomeca S.A. has issued Mandatory Service Bulletin (MSB) No. 292 72 1357, Version B, dated November 12, 2015. The MSB describes procedures for installing a post-modification (mod) TU357 gas generator module (M03). This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this proposed AD affects 426 engines installed on helicopters of U.S. registry. We also estimate that it would take about 40 hours per engine to comply with this proposed AD. The average labor rate is $85 per hour. Required parts cost about $16,500 per engine. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $8,477,400.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–11–09 Turbomeca S.A.: Amendment 39–18536; Docket No. FAA–2016–2859; Directorate Identifier 2016–NE–04–AD.

(a) Effective Date

This AD becomes effective July 5, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Arriel 1D and 1D1 turboshaft engines with a pre-modification (mod) TU357 gas generator module (M03), installed.

(d) Reason

This AD was prompted by reports of divergent rubbing between the piston shaft small diameter labyrinth and the rear bearing support. We are issuing this AD to prevent failure of the labyrinth seal and engine, in-flight shutdown, and loss of control of the helicopter.

(e) Actions and Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) Within 4 months or 240 engine operating hours after the effective date of this AD, whichever occurs later, remove the pre-modification (mod) TU357 gas generator module (M03) from service and replace with a part eligible for installation.

(2) Reserved.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov*.

(g) Related Information

(1) For more information about this AD, contact Philip Haberlen, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7770; fax: 781–238–7199; email: *philip.haberlen@faa.gov*.

(2) Refer to MCAI European Aviation Safety Agency AD 2016–0009, dated January 13, 2016, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2016–2859.

(3) Turbomeca S.A. Mandatory Service Bulletin (MSB) No. 292 72 1357, Version B, dated November 12, 2015, which is not incorporated by reference in this AD, can be obtained from Turbomeca S.A., using the contact information in paragraph (g)(4) of this AD.

(4) Turbomeca S.A., 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; fax: 33 (0)5 59 74 45 15.

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(h) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on May 23, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–12549 Filed 5–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–5800; Airspace Docket No. 15–AGL–21]

Establishment of Class E Airspace; Lisbon, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace in Lisbon, ND. Controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Lisbon Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective 0901 UTC, September 15, 2016. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/airtraffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html*.

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Raul Garza, Jr., Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: (817) 222–5874.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Lisbon Municipal Airport, Lisbon, ND.

History

On February 17, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E Airspace in the Lisbon, ND area. (81 FR 8026) Docket No. FAA–2015–5800. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Lisbon Municipal Airport, Lisbon, ND, to accommodate new RNAV standard instrument approach procedures. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL ND E5 Lisbon, ND [New]

Lisbon Municipal Airport, ND
(Lat. 46°26′49″ N., long. 097°43′42″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Lisbon Municipal Airport.

Issued in Fort Worth, TX, on May 9, 2016.

Robert W. Beck

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–12508 Filed 5–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket Number [160413330–6330–01]]

RIN 0648–BF99

Delay of Discharge Requirements for U.S. Coast Guard Activities in Greater Farallones and Cordell Bank National Marine Sanctuaries

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule; delay of effectiveness for discharge requirements with regard to U.S. Coast Guard activities.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) expanded the boundaries of Gulf of the Farallones National Marine Sanctuary (now renamed Greater Farallones National Marine Sanctuary or GFNMS) and Cordell Bank National Marine Sanctuary (CBNMS) to an area north and west of their previous boundaries with a final rule published on March 12, 2015. The final rule entered into effect on June 9, 2015. At that time, NOAA postponed the effectiveness of the discharge requirements in both sanctuaries' regulations in the areas added to GFNMS and CBNMS boundaries in 2015 with regard to U.S. Coast Guard activities for 6 months. This notice extends the postponement of the discharge requirements for these activities for another 6 months to provide adequate time for completion of an environmental assessment, and subsequent rulemaking, as appropriate.

DATES: The effectiveness for the discharge requirements in both CBNMS and GFNMS expansion areas with regard to U.S. Coast Guard activities is December 9, 2016.

ADDRESSES: Copies of the FEIS, final management plans, and the final rule published on March 12, 2015, can be viewed or downloaded at *http://farallones.noaa.gov/manage/expansion_cbgf.html.*

FOR FURTHER INFORMATION CONTACT: Maria Brown, Greater Farallones National Marine Sanctuary Superintendent, at *Maria.Brown@noaa.gov* or 415–561–6622.

SUPPLEMENTARY INFORMATION:

I. Background

On March 12, 2015, NOAA expanded the boundaries of Gulf of the Farallones National Marine Sanctuary (now renamed Greater Farallones National Marine Sanctuary or GFNMS) and Cordell Bank National Marine Sanctuary (CBNMS) to an area north and west of their previous boundaries with a final rule (80 FR 13078). The final rule entered into effect on June 9, 2015 (80 FR 34047). To ensure that the March 12, 2015, rule does not undermine USCG's ability to perform its duties, at that time, NOAA postponed the effectiveness of the discharge requirements in both sanctuaries' regulations with regard to U.S. Coast Guard (USCG) activities for 6 months. An additional six month postponement of the effectiveness of the discharge requirements was published in the **Federal Register** on December 1, 2015 (80 FR 74985), to provide adequate time for completion of an environmental assessment and to determine NOAA's next steps. Without further NOAA action, the discharge regulations would become effective with regard to USCG activities June 9, 2016. However, NOAA needs more time to assess USCG activities, conduct public scoping, and develop alternatives for an environmental assessment developed pursuant to the requirements of the National Environmental Policy Act. Therefore, this notice postpones the effectiveness of the discharge requirements in the expansion areas of both sanctuaries with regard to USCG activities for another 6 months, until December 9, 2016. During this time, NOAA will consider how to address USCG's concerns and will consider, among other things, whether to exempt certain USCG activities in sanctuary regulations. The public, other federal agencies, and interested stakeholders will be given an opportunity to comment on various alternatives that are being considered. This will include the opportunity to review any proposed rule and related environmental analysis. In the course of the rule making to expand GFNMS and CBNMS, NOAA learned from USCG that the discharge regulations had the potential to impair the operations of USCG vessels and air craft conducting law enforcement and on-water training exercises in GFNMS and CBNMS. The USCG supports national marine sanctuary management by providing routine surveillance and dedicated law enforcement of the National Marine Sanctuaries Act and sanctuary regulations.

II. Classification

A. National Environmental Policy Act

NOAA previously conducted an environmental analysis under the National Environmental Policy Act (NEPA) as part of the rulemaking process leading to the expansion of CBNMS and GFNMS, which addressed regulations regarding the discharge of any matter or material in the sanctuaries. The environmental impacts of the decision to postpone effectiveness reflect a continuation of the environmental baseline and the no action alternative presented in that analysis. Should NOAA decide to amend the regulations governing discharges for USGS activities in CBNMS and GFNMS, any additional environmental analysis required under NEPA would be prepared and released for public comment.

B. Executive Order 12866: Regulatory Impact

This action has been determined to be not significant for purposes of the meaning of Executive Order 12866.

C. Administrative Procedure Act

The Assistant Administrator of National Ocean Service (NOS) finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive the notice and comment requirements of the Administrative Procedure Act (APA) because this action is administrative in nature. This action postpones the effectiveness of the discharge requirements in the regulations for CBNMS and GFNMS in the areas added to the sanctuaries' boundaries in 2015 (subject to notice and comment review) with regard to U.S. Coast Guard activities for 6 months to provide adequate time for public scoping, completion of an environmental assessment, and subsequent rulemaking, as appropriate. Should NOAA decide to amend the regulations governing discharges in CBNMS and GFNMS, it would publish a proposed rule followed by an appropriate public comment period as required by the APA. The substance of the underlying regulations remains unchanged. Therefore, providing notice and opportunity for public comment under the Administrative Procedure Act would serve no useful purpose. The delay in effectiveness provided by this action will also enable NOAA to fully implement its statutory responsibilities under the NMSA to protect resources of a national marine sanctuary. For the reasons above, the Assistant Administrator also finds good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness and make this action effective immediately upon publication.

Authority: 16 U.S.C. 1431 *et seq.*

Dated: May 24, 2016.

Christopher C. Cartwright,

Acting, Deputy Assistant Administrator for Ocean Services and Coastal Management.

[FR Doc. 2016–12784 Filed 5–27–16; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 886

[Docket No. FDA–2016–N–1268]

Medical Devices; Ophthalmic Devices; Classification of the Diurnal Pattern Recorder System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is classifying the diurnal pattern recorder system into class II (special controls). The special controls that will apply to the device are identified in this order and will be part of the codified language for the diurnal pattern recorder system's classification. The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This order is effective May 31, 2016. The classification was applicable on March 4, 2016.

FOR FURTHER INFORMATION CONTACT: Alexander Beylin, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2404, Silver Spring, MD 20993–0002, 301–796–6463.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act, as amended by section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), provides two procedures by which a person may request FDA to classify a device under the criteria set forth in section 513(a)(1) of the FD&C Act. Under the first procedure, the person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III under section 513(f)(1) of the FD&C Act, the person requests a classification under section 513(f)(2). Under the second procedure, rather than first submitting a premarket notification under section 510(k) of the FD&C Act and then a request for classification under the first procedure, the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence and requests a classification under section 513(f)(2) of the FD&C Act. If the person submits a request to classify the device under this second procedure, FDA may decline to undertake the classification request if FDA identifies a legally marketed device that could provide a reasonable basis for review of substantial equivalence with the device or if FDA determines that the device submitted is not of "low-moderate risk" or that general controls would be inadequate to control the risks and special controls to mitigate the risks cannot be developed.

In response to a request to classify a device under either procedure provided by section 513(f)(2) of the FD&C Act, FDA will classify the device by written order within 120 days. This classification will be the initial classification of the device.

On April 28, 2014, Sensimed AG submitted a request for classification of the SENSIMED Triggerfish® device under section 513(f)(2) of the FD&C Act. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1). FDA classifies devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the request, FDA determined that the device can be classified into class II with the establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on March 4, 2016, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 886.1925.

Following the effective date of this final classification order, any firm submitting a premarket notification (510(k)) for a diurnal pattern recorder system will need to comply with the special controls named in this final order.

The device is assigned the generic name diurnal pattern recorder system, and it is identified as a nonimplantable, prescription device incorporating a telemetric sensor to detect changes in ocular dimension for monitoring diurnal patterns of intraocular pressure (IOP) fluctuations.

FDA has identified the following risks to health associated with this type of device and the measures required to mitigate these risks in Table 1:

TABLE 1—DIURNAL PATTERN RECORDER SYSTEM RISKS AND MITIGATION MEASURES

Identified risk	Mitigation measure
Ocular Adverse Events: • Hyperemia • Punctate keratitis • Discomfort • Dry eye—dry sensation in the eye where the sensor is placed • Foreign body sensation—gritty feeling • Itching, burning • Swelling of eyelids • Pink eye • Excessive watering, unusual secretions or redness of the eye • Eye pain or irritation • Eye injury	Clinical testing. Biocompatibility evaluation. Labeling.
Infection	Sterilization validation. Labeling.
Adverse Tissue Reaction	Biocompatibility evaluation. Labeling.
Software Malfunction	Software verification, validation, and hazard analysis.
Hardware Malfunction	Nonclinical testing.
Use Error (*e.g.,* improper fit, device manipulation)	Clinical testing. Labeling.
Electromagnetic Interference with Other Devices	Electromagnetic compatibility (EMC) and electromagnetic interference (EMI) testing. Labeling.
Electrical Malfunction (*e.g.,* shock, battery-related issues)	Electrical safety testing. Labeling.
Measurement Noise or Artifact Leading to Incorrect Graphical Representation of Variation.	Labeling.

FDA believes that the special controls, in addition to the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness.

Diurnal pattern recorder systems are not safe for use except under the supervision of a practitioner licensed by law to direct the use the device. As such, the device is a prescription device and must satisfy prescription labeling requirements (see 21 CFR 801.109 *Prescription devices*).

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this device type is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the diurnal pattern recorder system they intend to market.

II. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120, and the collections of information in 21 CFR parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485.

IV. Reference

The following reference is on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *http://www.regulations.gov.*

1. DEN140017: De novo request per 513(f)(2) from Sensimed AG, dated April 28, 2014.

List of Subjects in 21 CFR Part 886

Medical devices, Ophthalmic goods and services.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 886 is amended as follows:

PART 886—OPHTHALMIC DEVICES

■ 1. The authority citation for part 886 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Add § 886.1925 to subpart B to read as follows:

§ 886.1925 Diurnal pattern recorder system.

(a) *Identification.* A diurnal pattern recorder system is a nonimplantable, prescription device incorporating a telemetric sensor to detect changes in ocular dimension for monitoring diurnal patterns of intraocular pressure (IOP) fluctuations.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Clinical performance data must demonstrate that the device and all of its components perform as intended under anticipated conditions of use. The

following performance characteristics must be demonstrated:

(i) Ability of the device to detect diurnal changes.

(ii) Tolerability of the system at the corneoscleral interface in the intended use population.

(2) Nonclinical testing must validate measurements in an appropriate nonclinical testing model to ensure ability to detect changes in intraocular pressure.

(3) Patient-contacting components must be demonstrated to be biocompatible.

(4) Any component that is intended to contact the eye must be demonstrated to be sterile throughout its intended shelf life.

(5) Software verification, validation, and hazard analysis must be performed.

(6) Performance testing must demonstrate the electromagnetic compatibility and electromagnetic interference of the device.

(7) Performance testing must demonstrate electrical safety of the device.

(8) Labeling must include the following:

(i) Warning against activities and environments that may put the user at greater risk.

(ii) Specific instructions for the safe use of the device, which includes:

(A) Description of all device components and instructions for assembling the device;

(B) Explanations of all available programs and instructions for their use;

(C) Instructions and explanation of all user-interface components;

(D) Instructions on all safety features of the device; and

(E) Instructions for properly maintaining the device.

(iii) A summary of nonclinical testing information to describe EMC safety considerations.

(iv) A summary of safety information obtained from clinical testing.

(v) Patient labeling to convey information regarding appropriate use of device.

Dated: May 24, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–12683 Filed 5–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 771

Federal Transit Administration

49 CFR Part 622

[Docket No. FHWA–2016–0008]

RIN 2125–AF69; 2132–AB29

Categorical Exclusions

AGENCY: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends FHWA and FTA categorical exclusions (CE) for projects receiving limited Federal assistance to reflect a requirement in the Fixing America's Surface Transportation (FAST) Act to index for inflation the monetary thresholds for these CEs. This final rule also implements a provision in the FAST Act that directs FHWA to amend its rules on programmatic agreements for CEs. The amendments contained in this rule reflect statutory language in the FAST Act.

DATES: Effective on June 30, 2016.

FOR FURTHER INFORMATION CONTACT: For the Federal Highway Administration: Owen Lindauer, Ph.D., Office of Project Delivery and Environmental Review, HEPE, (202) 366–2655, *Owen.Lindauer@dot.gov,* or Jennifer Mayo, Office of the Chief Counsel, (202) 366–1523, *Jennifer.Mayo@dot.gov.* For FTA: Megan Blum, Office of Planning and Environment, (202) 366–0463, *Megan.Blum@dot.gov,* or Nancy-Ellen Zusman, Office of Chief Counsel, (312) 353–2577, *NancyEllen.Zusman@dot.gov.* The FHWA and FTA are both located at 1200 New Jersey Ave. SE., Washington, DC 20590–0001. Office hours are from 8:00 a.m. to 4:30 p.m. E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document may be viewed online through the Federal eRulemaking portal at *http://www.regulations.gov.* Retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 365 days a year. An electronic copy of this document may also be downloaded from the Office of the Federal Register home page at: *http://www.ofr.gov* and the Government Printing Office Web page at: *http://www.gpo.gov.*

Background

On December 4, 2015, President Obama signed into law the FAST Act, Public Law 114–94, 129 Stat. 1312, which contains new requirements that FHWA and FTA (hereafter referred to as "the Agencies") must meet in complying with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*). Section 1314(a) of the FAST Act amends section 1317 of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141, 126 Stat. 405, by inserting "(as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor)" after "$5,000,000" in paragraph (1)(A) and after "$30,000,000" in paragraph (1)(B) of the CE for projects receiving limited Federal financial assistance. The Agencies relied on the authority in MAP–21, section 1317 to establish limited Federal financial assistance CEs for FHWA at 23 CFR 771.117(c)(23) and for FTA at 23 CFR 771.118(c)(13). Those CEs were published in a final rule in the **Federal Register** on January 13, 2014 (79 FR 2107). With this final rule, the Agencies are amending the limited Federal financial assistance CEs to incorporate the adjustment for inflation requirement created by the FAST Act.

The Agencies included a reference to their respective Web sites (*www.fhwa.dot.gov* and *www.fta.dot.gov*) in the CE language in order to provide a source for locating the consumer price index (CPI), as adjusted annually. Per the FAST Act, section 1314(b), the first adjustment made pursuant to section 1314(a) must reflect the increase in the CPI since July 1, 2012. The Agencies divided the November 2015 CPI figure (237.336)—the latest data from the Department of Labor—by the July 2012 CPI figure (229.104), and multiplied the product (1.0359) by $5,000,000. The resulting value is $5,179,656.40, which is the $5 million limit found in sections 771.117(c)(23)(i) and 771.118(c)(13)(i) after adjusting for inflation, and should be considered when applying the limited Federal financial assistance CE to projects during the 2016 calendar year. Similarly, to determine the inflation figure for subparagraph (ii) under sections 771.117(c)(23) and 771.118(c)(13), the Agencies multiplied 1.0359 by $30,000,000 with the following result: $31,077,938.44. These figures ($5,179,656.40 and $31,077,938.44) are posted on the Agencies' Web sites and will be updated annually in January of subsequent years. Posting these figures also complies with section 1314(b)(1) which requires providing the first adjustment "not later than 60 days after the date of enactment of [the FAST] Act."

Section 1315(b) requires FHWA to revise its CE regulation on programmatic agreements. Specifically, FHWA must revise 23 CFR 771.117(g) to allow a State Department of Transportation (State DOT) to make a CE determination on behalf of FHWA. The revision must clarify that the authority under such agreements may include the responsibility to make CE determinations for actions described in 23 CFR 771.117(c)–(d) that meet the criteria for a CE under 40 CFR 1508.4 (the President's Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA) and are identified in the programmatic agreement.

This rulemaking adopts the language used in FAST Act section 1315(b) with two minor changes to retain the style used throughout the regulation: FHWA uses the abbreviation "CE" instead of "categorical exclusion" and "40 CFR 1508.4" instead of the statutory language of "section 1508.4 of title 40, Code of Federal Regulations." The rule set forth below incorporates the new phrase "and that meet the criteria for a CE under 40 CFR 1508.4, and are identified in the programmatic agreement" into the otherwise existing regulatory language in 23 CFR 771.117(g). The FHWA reprints below the paragraph 771.117(g) to show how the statutory language is incorporated into the paragraph as a whole.

The Agencies have determined that a final rule is appropriate in this instance because the language in the FAST Act is clear and does not require interpretive text. Therefore the amendments to 23 CFR 771.117(c)(23), 23 CFR 771.118(c)(13), and 23 CFR 771.117(g) follow the statutory language without substantive modification.

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment procedure if it finds, for good cause, that it would be impracticable, unnecessary, or contrary to the public interest. The Agencies find good cause as notice and comment for this rule would be unnecessary due to the nature of the revisions (*i.e.*, the rule simply incorporates the statutory language found in sections 1315(b) and 1314 of FAST without interpretation). The statutory language does not require regulatory interpretation to carry out its intent. The regulatory amendments in this final rule incorporate the statutory language, and comments cannot alter the regulation given the explicit mandate. Accordingly, the Agencies find good cause under 5 U.S.C. 553(b)(3)(B) to waive notice and opportunity for comment.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The Agencies have determined this action is not a significant regulatory action within the meaning of Executive Order 12866, and within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. Since this rulemaking implements a congressional mandate to allow States to make a CE determination on behalf of FHWA in specific instances and to adjust existing monetary-based CEs for inflation, the Agencies anticipate that the economic impact of this rulemaking would be minimal. This final rule will not adversely affect, in a material way, any sector of the economy. Additionally, this action complies with the principles of Executive Order 13563. In addition, these changes will not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

Since the Agencies find good cause under 5 U.S.C. 553(b)(3)(B) to waive notice and opportunity for comment for this rule, the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) do not apply. However, the Agencies evaluated the effects of this action on small entities and determined the action would not have a significant economic impact on a substantial number of small entities. This final rule will not make any substantive changes to the Agencies' regulations or in the way that the Agencies' regulations affect small entities; it merely incorporates statutory text. For this reason, the Agencies certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995) as it will not result in the expenditure by State, local, tribal governments, in the aggregate, or by the private sector, of $155 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial, direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the Agencies determined this action will not have a substantial direct effect or sufficient federalism implications on the States. The Agencies also determined this action will not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The Agencies analyzed this final rule under the PRA and determined this rule does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

Agencies are required to adopt implementing procedures for NEPA that establish specific criteria for, and identification of, three classes of actions: Those that normally require preparation of an Environmental Impact Statement; those that normally require preparation of an Environmental Assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). The CEQ regulations do not direct agencies to prepare a NEPA analysis or document before establishing Agency procedures (such as this regulation) that supplement the CEQ regulations for implementing NEPA. The changes proposed in this rule are part of those agency procedures, and therefore establishing the proposed changes does not require preparation of a NEPA analysis or document. Agency NEPA procedures are generally procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3.

Executive Order 12898 (Environmental Justice)

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a), 77 FR 27534 (May 10, 2012) (available online at *www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/order_56102a/index.cfm*), require DOT agencies to achieve environmental justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations in the United States. The DOT Order requires DOT agencies to address compliance with the Executive Order and the DOT Order in all rulemaking activities. In addition, the Agencies have issued additional documents relating to administration of the Executive Order and the DOT Order. On June 14, 2012, FHWA issued an update to its EJ order, FHWA Order 6640.23A, FHWA Actions to Address Environmental Justice in Minority Populations and Low Income Populations (available online at *www.fhwa.dot.gov/legsregs/directives/orders/664023a.cfm*). The FTA also issued an update to its EJ policy, FTA Policy Guidance for Federal Transit Recipients, 77 FR 42077 (July 17, 2012) (available online at *http://www.fta.dot.gov/legislation_law/12349_14740.html*).

The Agencies have evaluated this final rule under the Executive Order, the DOT Order, the FHWA Order, and FTA Policy Guidance. They determined that the amendment would not cause disproportionately high and adverse human health and environmental effects on minority or low income populations.

At the time the Agencies apply the NEPA implementing procedures in 23 CFR part 771, they would have an independent obligation to conduct an evaluation of the proposed action under the applicable EJ orders and guidance to determine whether the proposed action has the potential for EJ effects. The rule would not affect the scope or outcome of that EJ evaluation. In any instance where there are potential EJ effects resulting from a proposed Agency action covered under any of the NEPA classes of action in 23 CFR part 771, public outreach under the applicable EJ orders and guidance would provide affected populations with the opportunity to raise any concerns about those potential EJ effects. *See* DOT Order 5610.2(a), FHWA Order 6640.23A, and FTA Policy Guidance for Transit Recipients (available at links above). Indeed, outreach to ensure the effective involvement of minority and low income populations where there is potential for EJ effects is a core aspect of the EJ orders and guidance. For these reasons, the Agencies have determined that no further EJ analysis is needed and no mitigation is required in connection with the proposed revisions to the Agencies' NEPA regulations (23 CFR parts 771).

Executive Order 12630 (Taking of Private Property)

The Agencies have analyzed this final rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The Agencies found this final rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The Agencies analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agencies certify that this action would not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

The Agencies have analyzed this action under Executive Order 13175, dated November 6, 2000, and determined the action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. This final rule addresses obligations of Federal funds to States for Federal-aid highway projects and Federal funds to transit agencies for Federal public transportation projects and will not impose any direct compliance requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The Agencies have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agencies determined this rule is not a significant energy action under that order since it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 771

Categorical exclusions, Environmental review process, Environmental protection, Grant programs—transportation, Highways and roads, Programmatic approaches, Reporting and recordkeeping requirements.

49 CFR Part 622

Categorical exclusions, Environmental review process, Environmental protection, Grant programs—transportation, Public transportation, Transit.

Issued on: May 20, 2016.

Gregory G. Nadeau,

Federal Highway Administrator.

Carolyn Flowers,

Acting Administrator, Federal Transit Administration.

In consideration of the foregoing, the Agencies amend title 23, Code of

Federal Regulations part 771, and title 49, Code of Federal Regulations part 662, as follows:

TITLE 23—Highways

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

■ 1. Revise the authority citation for part 771 to read as follows:

Authority: 42 U.S.C. 4321 *et seq.;* 23 U.S.C. 106, 109, 128, 138, 139, 315, 325, 326, and 327; 49 U.S.C. 303; 40 CFR parts 1500–1508; 49 CFR 1.81, 1.85, and 1.91; Pub. L. 109–59, 119 Stat. 1144, Sections 6002 and 6010; Pub. L. 112–141, 126 Stat. 405, Sections 1315, 1316, 1317, 1318, and 1319; Pub. L. 114–94, 129 Stat. 1312, Sections 1314 and 1315.

■ 2. Revise § 771.117(c)(23) and (g) introductory text to read as follows:

§ 771.117 FHWA categorical exclusions.

* * * * *

(c) * * *

(23) Federally-funded projects:

(i) That receive less than $5,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see *www.fhwa.dot.gov* or *www.fta.dot.gov*) of Federal funds; or

(ii) With a total estimated cost of not more than $30,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see *www.fhwa.dot.gov* or *www.fta.dot.gov*) and Federal funds comprising less than 15 percent of the total estimated project cost.

* * * * *

(g) FHWA may enter into programmatic agreements with a State to allow a State DOT to make a NEPA CE certification or determination and approval on FHWA's behalf, for CEs specifically listed in paragraphs (c) and (d) of this section and that meet the criteria for a CE under 40 CFR 1508.4, and are identified in the programmatic agreement. Such agreements must be subject to the following conditions:

* * * * *

■ 3. Revise § 771.118(c)(13) to read as follows:

§ 771.118 FTA categorical exclusions.

* * * * *

(c) * * *

(13) Federally-funded projects:

(i) That receive less than $5,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see *www.fhwa.dot.gov* or *www.fta.dot.gov*) of Federal funds; or

(ii) With a total estimated cost of not more than $30,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see *www.fhwa.dot.gov* or *www.fta.dot.gov*) and Federal funds comprising less than 15 percent of the total estimated project cost.

* * * * *

TITLE 49—Transportation

PART 622—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

■ 4. Revise the authority citation for part 622 to read as follows:

Authority: 42 U.S.C. 4321 *et seq.;* 49 U.S.C. 303 and 5323(q); 23 U.S.C. 139 and 326; Pub. L. 109–59, 119 Stat. 1144, Sections 6002 and 6010; 40 CFR parts 1500–1508; 49 CFR 1.81; Pub. L. 112–141, 126 Stat. 405, Sections 1315, 1316, 1317, 1318, and 1319; and Pub. L. 114–94, 129 Stat. 1312, Section 1314.

[FR Doc. 2016–12577 Filed 5–27–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Part 556

[Docket ID: BOEM–2016–0031]

RIN 1010–AD06

Leasing of Sulfur or Oil and Gas in the Outer Continental Shelf; Correction MMAA104000

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Final rule; correction.

SUMMARY: On March 30, 2016, the Bureau of Ocean Energy Management (BOEM) published in the **Federal Register** a final rule that updates and streamlines the Outer Continental Shelf (OCS) oil and gas and sulfur leasing regulations, which will become effective on May 31, 2016 (81 FR 18111) ("Leasing Rule"). One of the regulations contained in the final rule was incorrectly stated. This document corrects that error

DATES: This correction is effective on May 31, 2016.

FOR FURTHER INFORMATION CONTACT: Robert Sebastian, Office of Policy, Regulation and Analysis at (504) 736–2761 or email at *robert.sebastian@boem.gov.*

SUPPLEMENTARY INFORMATION:

Need for Correction

BOEM has the authority, under certain conditions, to disqualify a party from acquiring a lease or an interest in a lease on the Outer Continental Shelf (OCS). The title, as well as the verbiage, of § 556.403 in the final Leasing Rule, states that BOEM may disqualify entities from "holding," a lease or lease interest on the OCS. This could be interpreted to imply that BOEM would not allow a disqualified party to retain a pre-existing OCS lease interest. That interpretation is incorrect. Disqualified entities may not acquire new leases or lease interests, but they may continue to hold existing leases or lease interests. BOEM is correcting the wording of § 556.403 to avoid the implication that the use of the word "hold" might authorize BOEM, under the conditions stated in § 556.403, to require forfeiture of leases already acquired. The final rule was issued under Docket ID: MMS–2007–OMM–0069, which has expired and is no longer accessible. Therefore, BOEM is utilizing a new Docket ID for this correction (BOEM–2016–0031).

Procedural Requirements

Section V, Legal and Regulatory Analyses, of the final rule issued on March 30, 2016 (81 FR 18145), summarizes BOEM's analyses of that rule pursuant to applicable statutes and executive orders. This amendment does not change the conclusions described in that section because the amendment conforms the regulatory text to BOEM's intent in the final rule, as then analyzed. Therefore, no additional analysis is necessary.

The Administrative Procedure Act, 5 U.S.C. 553(b), provides that, when an agency for good cause finds that "notice and public procedure . . . are impracticable, unnecessary, or contrary to the public interest," the agency may issue a rule without providing notice and an opportunity for prior public comment. To the extent this rule has substantive effects, it is to relieve regulated parties from sanctions. It does not require any party to change its conduct, and it does not change the rights of any party affected by the final rule. Therefore, BOEM believes that the public would not be interested in commenting on this correction, and thus notice and comment are unnecessary. Moreover, if BOEM were to first publish a proposed rule, allow the public sufficient time to submit comments, analyze the comments, and then publish a final rule, it would not be possible to correct this error and make it effective on the same day as the earlier final rule, May 31, 2016. Accordingly, notice and comment is impracticable. For these reasons, BOEM finds that soliciting public comment is unnecessary and impracticable and that there is good cause to promulgate this rule without first providing for public comment.

Similarly, BOEM finds that there is good cause to waive the usual 30-day delay in the effective date for this correction. This correction will not require any party to adjust its conduct and will not change the effect of the already published final rule. For these reasons, BOEM believes that the public does not need 30 days advance notice of this correction and that a delay in effectiveness is unnecessary. If this correction is not made effective on the same date, it would not become effective until after the erroneous language in the already published rule becomes effective, May 31, 2016. This could cause confusion to anyone potentially affected by § 556.403, making a 30-day delay in effectiveness impracticable. Therefore, pursuant to 5 U.S.C. 553(d), BOEM has determined that a 30-day delay in the effective date is unnecessary and impractical, and there is good cause to waive the delayed effective date for this final rule.

Dated: May 16, 2016.

Amanda C. Leiter,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, BOEM amends 30 CFR part 556 (as amended by the final rule published on March 30, 2016, at 81 FR 18111) as follows:

PART 556—LEASING OF SULFUR OR OIL AND GAS AND BONDING REQUIREMENTS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 556 continues to read as follows:

Authority: 30 U.S.C. 1701 note, 30 U.S.C. 1711, 31 U.S.C. 9701, 42 U.S.C. 6213, 43 U.S.C. 1331 note, 43 U.S.C. 1334, 43 U.S.C. 1801–1802.

■ 2. Revise § 556.403 to read as follows:

§ 556.403 Under what circumstances may I be disqualified from acquiring a lease or an interest in a lease on the OCS?

You may be disqualified from acquiring a lease or an interest in a lease on the OCS if:

(a) You or your principals are excluded or disqualified from participating in a transaction covered by Federal non-procurement debarment and suspension (2 CFR parts 180 and 1400), unless the Department explicitly approves an exception for a transaction pursuant to the regulations in those parts;

(b) The Secretary finds, after notice and hearing, that you or your principals (including in the meaning of "you," for purposes of this subparagraph, a bidder or prospective bidder) fail to meet due diligence requirements or to exercise due diligence under section 8(d) of OCSLA (43 U.S.C. 1337(d)) on any OCS lease; or

(c) BOEM disqualifies you from acquiring a lease or an interest in a lease on the OCS based on your unacceptable operating performance. BOEM will give you adequate notice and opportunity for a hearing before imposing a disqualification, unless BSEE has already provided such notice and opportunity for a hearing.

[FR Doc. 2016–12095 Filed 5–27–16; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2016–0356]

Special Local Regulation; Annual Dragon Boat Races, Portland, Oregon

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation requirements for the Portland Annual Dragon Boat Races from 7 a.m. until 6 p.m. on June 11, 2016 and 7 a.m. until 6 p.m. on June 12, 2016. This action is necessary to ensure the safety of maritime traffic, including the public vessels present, on the Willamette River during the Portland Annual Dragon Boat Races. During the enforcement period, no person or vessel may transit this regulated area without permission from the Sector Columbia River Captain of the Port or a designated representative.

DATES: The regulations in 33 CFR 100.1302 will be enforced from 7 a.m. until 6 p.m., on June 11, 2016 and June 12, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Ken Lawrenson, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503–240–9319, email *msupdxwwm@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations in 33 CFR 100.1302 from 7 a.m. until 6 p.m. on June 11, 2016 and 7 a.m. until 6 p.m. on June 12, 2016, for the Portland Annual Dragon Boat races in the Willamette River. This action is being taken to provide for the safety of life on navigable waterways during the regatta. Our regulation for the Annual Dragon Boat Races, Portland, Oregon, § 100.1302, specifies the location of the regulated area for this regatta course as all waters of the Willamette River shore to shore, bordered on the north by the Hawthorne Bridge, and on the south by the Marquam Bridge. As specified in § 100.1302, during the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port Sector Columbia River (COTP) or a COTP designated representative.

This notice of enforcement is issued under authority of 33 CFR 100.1302 and 5 U.S.C. 552 (a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: May 20, 2016.

D.J. Travers,

Captain, U.S. Coast Guard, Captain of the Port, Sector Columbia River.

[FR Doc. 2016–12686 Filed 5–27–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0426]

Drawbridge Operation Regulation; St. Croix River, Stillwater, MN

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Stillwater Highway Bridge across the St. Croix River, mile 23.4, at Stillwater, Minnesota. The deviation is necessary due to increased vehicular traffic after a local Independence Day fireworks display. This deviation allows the bridge to remain in the closed-to-navigation position to clear increased vehicular traffic congestion.

DATES: This deviation is effective from 10 p.m. to 11:30 p.m., July 4, 2016.

ADDRESSES: The docket for this deviation, (USCG–2016–0426) is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314–269–2378, email *Eric.Washburn@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Minnesota Department of Transportation requested a temporary deviation for the Stillwater Highway Bridge, across the St. Croix River, mile 23.4, at Stillwater, Minnesota. This deviation allows the bridge to remain in the closed-to-navigation position from 10 p.m. to 11:30 p.m. on July 4, 2016.

The Stillwater Highway Bridge currently operates in accordance with 33 CFR 117.667(b), which states specific seasonal and commuter hour operating requirements.

The Stillwater Highway Bridge provides a vertical clearance of 10.9 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial sightseeing/dinner cruise boats and recreational watercraft. This temporary deviation has been coordinated with waterway users. No objections were received.

The bridge will not be able to open for emergencies and there are no alternate routes for vessels transiting this section of the St. Croix River. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so the vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 24, 2016.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2016–12663 Filed 5–27–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0403]

Drawbridge Operation Regulation; Housatonic River, Stratford, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Metro-North Devon Bridge across the Housatonic River, mile 3.9, at Stratford, Connecticut. This deviation is necessary to allow the bridge owner to perform timber ties and headblocks replacement at the bridge.

DATES: This deviation is effective from 8 a.m. on May 31, 2016 to 8 a.m. on July 18, 2016.

ADDRESSES: The docket for this deviation [USCG–2016–0403], is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Judy Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 514–4330, email *judy.k.leung-yee@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Metro-North Devon Bridge, mile 3.9, across the Housatonic River, has a vertical clearance in the closed position of 19 feet at mean high water and 25 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.207(b).

The waterway is transited by seasonal recreational vessels.

The bridge owner, Connecticut Department of Transportation, requested a temporary deviation from the normal operating schedule to perform timber ties and headblocks replacement at the bridge.

Under this temporary deviation, the Metro-North Devon Bridge will operate according to the schedule below:

a. From 8 a.m. on May 31, 2016 through 4 a.m. on June 3, 2016, the bridge will not open to marine traffic.

b. From 4 a.m. on June 3, 2016 through 8 a.m. on June 6, 2016, the bridge will open fully on signal upon 24 hr advance notice.

c. From 8 a.m. on June 6, 2016 through 4 a.m. on June 10, 2016, the bridge will not open to marine traffic.

d. From 4 a.m. on June 10, 2016 through 8 a.m. on June 13, 2016, the bridge will open fully on signal upon 24 hr advance notice.

e. From 8 a.m. on June 13, 2016 through 4 a.m. on June 17, 2016, the bridge will not open to marine traffic.

f. From 4 a.m. on June 17, 2016 through 8 a.m. on June 20, 2016, the bridge will open fully on signal upon 24 hr advance notice.

g. From 8 a.m. on June 20, 2016 through 4 a.m. on June 24, 2016, the bridge will not open to marine traffic.

h. From 4 a.m. on June 24, 2016 through 8 a.m. on June 27, 2016, the bridge will open fully on signal upon 24 hr advance notice.

i. From 8 a.m. on June 27, 2016 through 4 a.m. on July 1, 2016, the bridge will not open to marine traffic.

j. From 4 a.m. on July 1, 2016 through 8 a.m. on July 5, 2016, bridge will open in accordance with 33 CFR 117.207(b).

k. From 8 a.m. on July 5, 2016 through 4 a.m. on July 8, 2016, the bridge will not open to marine traffic.

l. From 4 a.m. on July 8, 2016 through 8 a.m. on July 11, 2016, the bridge will open fully on signal upon 24 hr advance notice.

m. From 8 a.m. on July 11, 2016 through 4 a.m. on July 15, 2016, the bridge will not open to marine traffic.

n. From 4 a.m. on July 15, 2016 through 8 a.m. on July 18, 2016, the bridge will open fully on signal upon 24 hr advance notice.

Vessels able to pass under the bridge in the closed position may do so at anytime. The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass.

The Coast Guard will inform the users of the waterways through our Local Notice and Broadcast to Mariners of the change in operating schedule for the bridge so that vessel operations can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 25, 2016.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2016–12687 Filed 5–27–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0112]

Drawbridge Operation Regulation; Chester River, Chestertown, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from drawbridge regulation; modification.

SUMMARY: The Coast Guard has modified a temporary deviation from the operating schedule that governs the S213 (MD213) Bridge across the Chester River, mile 26.8, at Chestertown, MD. This modified deviation is necessary to perform bridge maintenance and repairs. This modified deviation allows the bridge to remain in the closed-to-navigation position.

DATES: This modified deviation is effective without actual notice from May 31, 2016 through 6 p.m. on July 31 2016. For the purposes of enforcement, actual notice will be used from May 24, 2016 at 2 p.m., until May 31, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0112] is available at *http://www.regulations.gov*. Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this modified temporary deviation, call or email Mr. Hal R. Pitts, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6222, email *Hal.R.Pitts@uscg.mil*.

SUPPLEMENTARY INFORMATION: On February 25, 2016, the Coast Guard published a temporary deviation entitled "Drawbridge Operation Regulation; Chester River, Chestertown, MD" in the **Federal Register** (81 FR 9338). Under that temporary deviation, the bridge would remain in the closed-to-navigation position from 6 a.m. on February 22, 2016 to 6 p.m. on June 1, 2016. The Maryland Department of Transportation State Highway Administration, that owns and operates the S213 (MD213) Bridge, has requested an extension of time for the temporary deviation from the current operating regulations to complete a bridge stringer replacement project, due to delays related to inclement weather. The bridge is a bascule draw bridge and has a vertical clearance in the closed position of 12 feet above mean high water.

The current operating schedule is open on signal if at least six hours notice is given as set out in 33 CFR 117.551. Under this modified temporary deviation, the bridge will remain in the closed-to-navigation position from 6 a.m. on February 22, 2016 to 6 p.m. on July 31, 2016.

The Chester River is used by a variety of vessels including small U.S. government and public vessels, small commercial vessels, and recreational vessels. The Coast Guard has carefully considered the nature and volume of vessel traffic on the waterway in publishing this temporary deviation.

During the closure times there will be limited opportunity for vessels able to safely pass through the bridge in the closed position to do so. Vessels able to safely pass through the bridge in the closed position may do so, after receiving confirmation from the bridge tender that it is safe to transit through the bridge. The bridge will be able to open for emergencies if at least six hours notice is given and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transit to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 24, 2016.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2016–12652 Filed 5–27–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0434]

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, South Branch of the Elizabeth River, Portsmouth-Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Norfolk and Western railroad bridge (Norfolk Southern V6.8 Bridge) across the South Branch of the Elizabeth River, mile 3.6, at Portsmouth-Chesapeake, VA. The deviation is necessary to perform bridge maintenance and repairs. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: This deviation is effective from 7 a.m. on June 6, 2016, to 5 p.m. on June 23, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0434] is available at *http://www.regulations.gov*. Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Hal R. Pitts, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6222, email *Hal.R.Pitts@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Norfolk Southern Corporation, that owns and operates the Norfolk and Western railroad bridge (Norfolk Southern V6.8 Bridge), has requested a temporary deviation from the current operating regulations to install a new tie deck across the vertical lift span and under the mitre joints on the fixed approach spans. The bridge is a vertical lift draw bridge and has a vertical clearance in the closed position of 10 feet above mean high water.

The current operating schedule is set out in 33 CFR 117.997(b). Under this temporary deviation, the bridge will remain in the closed-to-navigation position from 7 a.m. to 11:30 a.m. and from 12:30 p.m. to 5 p.m. from June 6, 2016 through June 9, 2016, June 13, 2016 through June 16, 2016, and June 20, 2016 through June 23, 2016. At all other times the bridge will operate per 33 CFR 117.997(b).

The South Branch of the Elizabeth River is used by a variety of vessels including deep draft ocean-going vessels, U.S. government vessels, small commercial vessels, recreational vessels and tug and barge traffic. The Coast Guard has carefully coordinated the restrictions with waterway users.

There will be limited opportunity for vessels to transit through the bridge in the closed position during this temporary deviation. Vessels able to pass through the bridge in the closed position may do so after receiving confirmation from the bridge tender that it is safe to transit through the bridge. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transit to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 24, 2016.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2016–12653 Filed 5–27–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0319]

RIN 1625–AA00

Safety Zone; Chesapeake Bay, Cape Charles, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of the Chesapeake Bay in Cape Charles, Virginia. This safety zone will restrict vessel movement in the specified area during a fireworks display. This action is necessary to provide for the safety of life and property on the surrounding navigable waters during the fireworks display.

DATES: This rule is effective and enforced from 8 p.m. through 8:30 p.m. on July 2, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0319 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Barbara Wilk, Waterways Management Division Chief, Sector Hampton Roads, U.S. Coast Guard; telephone 757–668–5580, email *HamptonRoadsWaterway@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule is impracticable, because information about the fireworks on July 2, 2016 was not received by the Coast Guard with sufficient time to allow for an opportunity to comment on the proposed rule. Publishing an NPRM would also be contrary to the public interest as immediate action is needed to ensure the safety of the fireworks participants, patrol vessels, and other vessels transiting the fireworks display area. The Coast Guard will provide advance notifications to users of the affected waterway via marine information broadcasts and local notice to mariners. For the same reasons, we find good cause, under 5 U.S.C. 553(d)(3), for making this rule effective less than 30 days after publication in the **Federal Register**.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Hampton Roads (COTP) has determine that potential hazards associated with the fireworks display starting on July 2, 2016 will be a safety concern for anyone within a 420-foot radius of the fireworks barge. This rule is needed to protect the participants, patrol vessels, and other vessels transiting the navigable waters of the Chesapeake Bay, in the vicinity of the Sunset Beach Resort in Cape Charles, VA from hazards associated with a fireworks display. The potential hazards to mariners within the safety zone include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

IV. Discussion of the Rule

The Captain of the Port of Hampton Roads is establishing a safety zone on the Chesapeake Bay, in the vicinity of the Sunset Beach Resort, in Cape Charles, VA. The safety zone will encompass all navigable waters within a 420 foot radius of the fireworks display barge location. This safety zone still allows for navigation on the waterway. This safety zone will be effective and enforced from 8 p.m. through 8:30 p.m. on July 2, 2016. Access to the safety zone will be restricted during the effective period. Except for participants and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

The Captain of the Port will give notice of the enforcement of the safety zone by all appropriate means to provide the widest dissemination of notice to the affected segments of the public. This includes publication in the Local Notice to Mariners and Marine Information Broadcasts.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

Although this safety zone restricts vessel traffic through the regulated area, the effect of this rule will not be significant because: (i) This rule will only be enforced for the limited size and duration of the event; and (ii) the Coast Guard will make extensive notification to the maritime community via marine information broadcasts so mariners may adjust their plans accordingly.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than 2 hours that will prohibit entry within 420 feet of the fireworks display. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0319 to read as follows:

§ 165.T05–0319 Safety Zone, Chesapeake Bay; Cape Charles, VA.

(a) *Definitions.* For the purposes of this section, *Captain of the Port* means the Commander, Sector Hampton Roads. *Representative* means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port. *Participants* mean individuals and vessels involved in explosives training.

(b) *Locations.* The following area is a safety zone:

(1) All waters in the vicinity of the of the Sunset Beach Resort, on the Chesapeake Bay, within a 420 foot radius of the fireworks display barge in approximate position 37°08′12″ N., 075°58′34″ W. (NAD 1983).

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) With the exception of participants, entry into or remaining in this safety zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(3) All vessels underway within this safety zone at the time it is implemented are to depart the zone immediately.

(4) The Captain of the Port, Hampton Roads or his representative can be contacted at telephone number (757) 668–5555.

(5) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(6) This section applies to all persons or vessels wishing to transit through the

safety zone except participants and vessels that are engaged in the following operations:

(i) Enforcing laws;

(ii) Servicing aids to navigation, and

(iii) Emergency response vessels.

(7) The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(d) *Enforcement Period.* This section will be enforced from 8 p.m. through 8:30 p.m. on July 2, 2016.

Dated: May 17, 2016.

Christopher S. Keane,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2016–12720 Filed 5–27–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0354]

RIN 1625–AA00

Safety Zones; Upper Mississippi River Between Mile 179.2 and 180.5, St. Louis, MO and Between Mile 839.5 and 840, St. Paul, MN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing four temporary safety zones for two areas of the Upper Mississippi River (UMR); three safety zones between UMR mile 179.2 and 180.5, and one between UMR mile 839.5 to 840. These temporary safety zones are necessary to protect persons and property from potential damage and safety hazards during fireworks displays on or over the navigable waterway. During the period of enforcement, entry into these safety zones is prohibited unless specifically authorized by the Captain of the Port (COTP) Upper Mississippi River or other designated representative.

DATES: This rule is effective from 7:45 p.m. on June 2, 2016 until 10:30 p.m. on July 4, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0354 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Sean Peterson, Chief of Prevention, Sector Upper Mississippi River, U.S. Coast Guard; telephone 314–269–2332, email *Sean.M.Peterson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency finds good cause that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to these rules because fireworks displays on or over the navigable waterway poses safety concerns for waterway users. In this case, the Coast Guard was not notified of the fireworks displays until April 26, 2016 and May 16, 2016. After full review of the details for the planned and locally advertised displays, the Coast Guard determined action is needed to protect people and property from the safety hazards associated with the fireworks displays on the UMR near St. Louis, MO and St. Paul, MN. It is impracticable to publish an NPRM because we must establish these safety zones by June 2 and 11, and July 3 and 4, 2016.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making the rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of the rule is contrary to the public interest as it would delay the effectiveness of the temporary safety zones needed to respond to potential related safety hazards until after the planned fireworks displays. This rule does provide approximately 7 to 30 days notice for the four safety zones related to the four planned fireworks displays on the UMR near St. Louis, MO and St. Paul, MN.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with fireworks displays taking place on or over these sections of navigable waterway will be a safety concern for anyone within the areas that are designated as the safety zones. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zones during the fireworks displays.

IV. Discussion of the Rule

This rule establishes four safety zones as follows:

(1) From 7:45 p.m. until 9 p.m. on June 2, 2016, for the Ribbon Cutting Celebration for the Completion of the Riverfront Component for the Great Rivers Greenway barge based fireworks display, all waters of the UMR from mile 179.2 to 180;

(2) from 9 p.m. until 11 p.m. on June 11, 2016, for the St. Louis Brewers Guild barge based fireworks display, all waters of the UMR from mile 179.2 to 180.5;

(3) from 8:30 p.m. until 11 p.m. on July 3, 2016, for the Lumiere Place July 3, 2016 barge based fireworks display, all waters of the UMR from mile 180 to 180.5; and

(4) from 10 p.m. until 10:30 p.m. on July 4, 2016, for the City of St. Paul July 4th Celebration, all waters of the UMR from mile 839.5 to 840.

Exact times of the closures and any changes to the planned scheduled will be communicated to mariners using Broadcast Notices to Mariners and Local Notices to Mariners. The safety zones are intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks displays. No vessel or person will be permitted to enter the safety zones without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. These rules have not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, they have not been reviewed by the Office of Management and Budget.

This temporary final rule establishes four safety zones, each of which will be enforced for a limited time period. During the enforcement periods, vessels are prohibited from entering into or remaining within the safety zones unless specifically authorized by the COTP or other designated representative. Based on the locations, limited safety zone sizes, and short duration of the enforcement periods, these rules do not pose a significant regulatory impact. Additionally, notice of the safety zones or any changes in the planned schedules will be made via Broadcast Notices to Mariners and Local Notices to Mariners. Deviation from these rules may be requested from the COTP or other designated representative and will be considered on a case-by-case basis.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zones may be small entities, for the reasons stated in section V.A. above, these rules will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding these rules. If the rules would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that the actions are one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves safety zones, each lasting less than three hours that will limit access to specific areas on the UMR. These safety zones are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0354 to read as follows:

§ 165.T08–0354 Safety zones; Upper Mississippi River between mile 179.2 and 180.5; St. Louis, MO and between mile 839.5 and 840, St. Paul, MN.

(a) *Safety zones.* The following areas are safety zones:

(1) Great Rivers Greenway fireworks display, St. Louis, MO:

(i) *Location.* All waters of the Upper Mississippi River from mile 179.2 to 180.

(ii) *Enforcement period.* This safety zone will be enforced from 7:45 p.m. until 9 p.m. on June 2, 2016;

(2) St. Louis Brewers Guild fireworks display, St. Louis, MO:

(i) *Location.* All waters of the Upper Mississippi River from mile 179.2 to 180.5.

(ii) *Enforcement period.* This safety zone will be enforced from 9 p.m. until 11 p.m. on June 11, 2016;

(3) Lumiere Place fireworks display, St. Louis, MO:

(i) *Location.* All waters of the Upper Mississippi River from mile 180 to 180.5.

(ii) *Enforcement period.* This safety zone will be enforced from 8:30 p.m. until 11 p.m. on July 3, 2016; and

(4) City of St. Paul July 4th Celebration, St. Paul MN.

(i) *Location.* All waters of the Upper Mississippi River from mile 839.5 to 840.

(ii) *Enforcement period.* This safety zone will be enforced from 10 p.m. until 10:30 p.m. on July 4, 2016.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Upper Mississippi River in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zones described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or designated representative via VHF–FM Channel 16, or through Coast Guard Sector Upper Mississippi River at (314) 269–2332.

(3) All persons and vessels shall comply with the instruction of the COTP and designated on-scene personnel.

(d) *Information Broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate of the enforcement period for each safety zone as well as any changes in the planned and published dates and times of enforcement.

Dated: May 19, 2016.

M.L. Malloy,

Captain, U.S. Coast Guard, Captain of the Port Upper Mississippi River.

[FR Doc. 2016–12712 Filed 5–27–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0197; FRL–9945–05]

Fluazinam; Pesticide Tolerances; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of April 8, 2016, concerning the addition of certain commodities to 40 CFR 180.574. Vegetable cucurbit, group 9 was inadvertently omitted. This document corrects that omission.

DATES: This final rule correction is effective May 31, 2016.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0197, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington DC 20460–0001; telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

The Agency included in the April 8, 2016 final rule a list of those who may be potentially affected by this action.

II. What does this technical correction do?

EPA issued a final rule in the **Federal Register** of April 8, 2016 (81 FR 20545) (FRL–9942–99) that was adding commodities including Vegetable cucurbit, group 9 to 40 CFR 180.574(a)(1). EPA inadvertently omitted the language in the codified text, which would have added Vegetable cucurbit, group 9.

III. Why is this correction issued as a final rule?

Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment, because this is correcting a typographical error. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

IV. Do any of the statutory and executive order reviews apply to this action?

No. For a detailed discussion concerning the statutory and executive order review, refer to Unit VI. of the April 8, 2016 final rule.

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pest, Reporting and recordkeeping requirements.

Dated: May 24, 2016.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is corrected as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In the table in § 180.574(a)(1), alphabetically add the entry "Vegetable cucurbit, group 9" to read as follows:

§ 180.574 Fluazinam; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * * *	*
Vegetable, cucurbit, group 9	0.07
* * * *	*

* * * * *

[FR Doc. 2016–12721 Filed 5–27–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100120037–1626–02 and 101217620–1788–03]

RIN 0648–XE491

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2016 Accountability Measure-Based Closures for Commercial and Recreational Species in the U.S. Caribbean Off Puerto Rico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closures.

SUMMARY: NMFS implements accountability measures (AMs) for species and species groups in the exclusive economic zone (EEZ) of the U.S. Caribbean off Puerto Rico for the 2016 fishing year through this temporary rule. NMFS has determined that annual catch limits (ACLs) in the EEZ off Puerto Rico were exceeded for spiny lobster; the commercial sectors for triggerfish and filefish, wrasses, Snapper Unit 2, and parrotfishes; and the recreational sector for jacks, based on average landings during the 2012–2014 fishing years. This temporary rule reduces the lengths of the 2016 fishing seasons for these species and species groups by the amounts necessary to ensure that landings do not exceed the applicable ACLs in 2016. NMFS closes the applicable sectors for these species and species groups beginning on the dates specified below (in the **DATES** section) and continuing until the end of the fishing year, December 31, 2016. These AMs are necessary to protect the Caribbean reef fish and spiny lobster resources in the EEZ off Puerto Rico.

DATES: This rule is effective June 30, 2016, until 12:01 a.m., local time, January 1, 2017. The AMs apply in the EEZ off Puerto Rico for the following species and species groups, and fishing sectors, at the times and dates specified below, until 12:01 a.m., local time, January 1, 2017.

- Triggerfish and filefish, combined (commercial) effective at 12:01 a.m., local time, October 16, 2016;
- Jacks (recreational) effective at 12:01 a.m., local time, November 4, 2016;
- Wrasses (commercial) effective at 12:01 a.m., local time, November 16, 2016;
- Snapper Unit 2 (commercial) effective at 12:01 a.m., local time, November 26, 2016;
- Spiny lobster (commercial and recreational) effective at 12:01 a.m., local time, December 10, 2016;
- Parrotfishes (commercial) effective at 12:01 a.m., local time, December 19, 2016.

FOR FURTHER INFORMATION CONTACT: William S. Arnold, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *bill.arnold@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Caribbean, which includes triggerfish and filefish, wrasses, snappers in Snapper Unit 2, parrotfishes, and jacks, is managed under the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (Reef Fish FMP). Caribbean spiny lobster is managed under the FMP for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands (Spiny Lobster FMP). The FMPs were prepared by the Caribbean Fishery Management Council (Council) and are implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The 2010 Caribbean ACL Amendment (Amendment 2 to the FMP for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (Queen Conch FMP) and Amendment 5 to the Reef Fish FMP) and 2011 Caribbean ACL Amendment (Amendment 3 to the Queen Conch FMP, Amendment 6 to the Reef Fish FMP, Amendment 5 to the Spiny Lobster FMP, and Amendment 3 to FMP for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands) revised the Reef Fish and Spiny lobster FMPs (76 FR 82404, December 30 2011, and 76 FR 82414, December 30, 2011). Among other actions, the 2010 and 2011 Caribbean ACL Amendments and the associated final rules established ACLs and AMs for Caribbean spiny lobster and reef fish, including the species and species groups identified in this temporary rule. The 2010 and 2011 Caribbean ACL Amendments and final rules also allocated ACLs among three Caribbean island management areas, *i.e.*, the Puerto Rico, St. Croix, and St. Thomas/St. John management areas of the EEZ, as specified in Appendix E to part 622. The ACLs for species and species groups in the Puerto Rico management area, except for spiny lobster, were further allocated between the commercial and recreational sectors, and AMs apply to each of these sectors separately.

On May 11, 2016, NMFS published the final rule implementing the Comprehensive AM Application Amendment to the U.S. Caribbean FMPs: Application of Accountability Measures and additional regulatory clarifications (81 FR 29166). Among other things, the final rule clarified that the spiny lobster ACL for the Puerto Rico management area is applied as a single ACL for both the commercial and recreational sectors, consistent with the Council's intent in the 2011 Caribbean ACL Amendment. Additionally, the final rule clarified the fishing restrictions that occur in the Caribbean EEZ when an ACL is exceeded and an AM is implemented.

The ACLs for the applicable species and species groups, and fishing sectors in the EEZ off Puerto Rico covered by this temporary rule are as follows and are given in round weight:

- The commercial ACL for triggerfish and filefish, combined, is 58,475 lb (26,524 kg), as specified in § 622.12(a)(1)(i)(Q).
- The commercial ACL for wrasses is 54,147 lb (24,561 kg), as specified in § 622.12(a)(1)(i)(L).
- The commercial ACL for Snapper Unit 2 is 145,916 lb (66,186 kg), as specified in § 622.12(a)(1)(i)(D).
- The ACL for spiny lobster is 327,920 lb (148,742 kg), as specified in § 622.12(a)(1)(iii).
- The commercial ACL for parrotfishes is 52,737 lb (23,915 kg), as specified in § 622.12(a)(1)(i)(B).
- The recreational ACL for jacks is 51,001 lb (23,134 kg), as specified in § 622.12(a)(1)(ii)(M).

In accordance with regulations at 50 CFR 622.12(a), if landings from a Caribbean island management area are estimated to have exceeded the applicable ACL, the Assistant Administrator for NOAA Fisheries (AA), will file a notification with the Office of the Federal Register to reduce the length of the fishing season for the applicable species or species group the following fishing year by the amount necessary to ensure landings do not exceed the applicable ACL. NMFS evaluates landings relative to the applicable ACL based on a moving 3-year average of landings, as described in the FMPs.

Based on the most recent landings data, from the 2012–2014 fishing years, NMFS has determined that the ACLs for spiny lobster; the commercial sectors for triggerfish and filefish, wrasses, Snapper Unit 2, spiny lobster, and parrotfishes; and the recreational sector of jacks have been exceeded. In addition, NMFS has determined that the ACLs for these species and species groups were exceeded because of increased catches and not as a result of enhanced data collection and monitoring efforts.

This temporary rule implements AMs for the identified commercial and recreational sectors for the species and species groups listed in this temporary rule, to reduce the 2016 fishing season lengths to ensure that landings do not exceed the applicable ACLs in the 2016 fishing year. The 2016 fishing seasons for the applicable sectors for these species and species groups in the Puerto Rico management area of the EEZ are closed at the times and dates listed below. These closures remain in effect until the 2017 fishing seasons begin at 12:01 a.m., local time, January 1, 2017.

- The commercial sector for triggerfish and filefish, combined, is closed effective at 12:01 a.m., local time, October 16, 2016. Triggerfish and filefish, combined, include ocean (*Canthidermis sufflamen*), queen (*Balistes vetula*), and sargassum triggerfish (*Xanthichthys ringens*), scrawled (*Aluterus scriptus*) and whitespotted filefish (*Cantherhines macrocerus*), and black durgon (*Melichthys niger*);
- The recreational sector for jacks is closed effective at 12:01 a.m., local time, November 4, 2016. Jacks include horse-eye (*Caranx latus*), black (*Caranx lugubris*), almaco (*Seriola rivoliana*), bar (*Caranx ruber*), and yellow jack (*Caranx bartholomaei*), greater amberjack (*Seriola dumerili*), and blue runner (*Caranx crysos*);
- The commercial sector for wrasses is closed effective at 12:01 a.m., local time, November 16, 2016. Wrasses include hogfish (*Lachnolaimus maximus*), puddingwife (*Halichoeres radiatus*) and Spanish hogfish (*Bodianus rufus*);
- The commercial sector for Snapper Unit 2 is closed effective at 12:01 a.m., local time, November 26, 2016. Snapper Unit 2 include queen (*Etelis oculatus*) and cardinal snapper (*Pristipomoides macrophthalmus*);
- The commercial and recreational sectors for spiny lobster (*Panulirus argus*) are closed effective at 12:01 a.m., local time, December 10, 2016; and
- The commercial sector for parrotfishes is closed effective at 12:01 a.m., local time, December 19, 2016. Parrotfishes include queen (*Scarus vetula*), princess (*Scarus taeniopterus*), striped (*Scarus iseri*), redband (*Sparisoma aurofrenatum*), redfin (*Sparisoma rubripinne*), redtail (*Sparisoma chrysopterum*), and stoplight parrotfish (*Sparisoma viride*).

During the Puerto Rico commercial sector closures announced in this temporary rule, the commercial sectors for the indicated species or species groups are closed. All harvest or possession of the indicated species or species group in or from the Puerto Rico management area is limited to the recreational bag and possession limits specified in § 622.437, and the sale or purchase of the indicated species or species group in or from the Puerto Rico management area is prohibited. During the Puerto Rico recreational sector closure for jacks announced in this temporary rule, the jacks recreational sector is closed, and the recreational bag and possession limits for jacks in or from the Puerto Rico management area are zero.

During the spiny lobster closure in the Puerto Rico management area, both the commercial and recreational sectors fo spiny lobster are closed. The harvest, possession, purchase, or sale of spiny lobster in or from the Puerto Rico management area is prohibited. The bag and possession limits for spiny lobster in or from the Puerto Rico management area are zero.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of the species and species groups included in this temporary rule, in the EEZ off Puerto Rico, and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.12(a)(1) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The AA finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the rules implementing the ACLs and AMs for these species and species groups have been subject to notice and comment, and all that remains is to notify the public that the ACLs were exceeded and that the AMs are being implemented for the 2016 fishing year. Prior notice and opportunity for public comment on this action would be contrary to the public interest, because many of those affected by the length of the commercial and recreational fishing seasons, including commercial operations, and charter vessel and headboat operations that book trips for clients in advance, need advance notice to adjust their business plans to account for the reduced commercial and recreational fishing seasons.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 25, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–12728 Filed 5–27–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 104
Tuesday, May 31, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6894; Directorate Identifier 2015–NM–120–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A300 F4–600R series airplanes. This proposed AD was prompted by a report of two adjacent frame forks that were found cracked on the aft lower deck cargo door (LDCD) of two Model A300–600F4 airplanes during scheduled maintenance. This proposed AD would require repetitive high frequency eddy current (HFEC) inspections of the aft LDCD frame forks; a one-time check of the LDCD clearances; and a one-time detailed visual inspection of hooks, eccentric bushes, and x-stops; and corrective actions if necessary. We are proposing this AD to detect and correct cracked or ruptured aft LDCD frames, which could allow loads to be transferred to the remaining structural elements. This condition could lead to the rupture of one or more vertical aft LDCD frames, which could result in reduced structural integrity of the aft LDCD.

DATES: We must receive comments on this proposed AD by July 15, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6894; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6894; Directorate Identifier 2015–NM–120–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0152, dated July 24, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for all Airbus Model A300 F4–605R and A300 F4–622R. The MCAI states:

> During scheduled maintenance at frames (FR) 61 and FR61A on the aft lower deck cargo door (LDCD) of two A300–600F4 aeroplanes, two adjacent frame forks were found cracked.
>
> Subsequent analysis determined that, in case of cracked or ruptured aft cargo door frame(s), loads will be transferred to the remaining structural elements. However, these secondary load paths will be able to sustain the loads for a limited number of flight cycles only.
>
> This condition, if not detected and corrected, could lead to the rupture of one or more vertical aft cargo door frame(s), resulting in reduced structural integrity of the aft cargo door.
>
> To address this unsafe condition, Airbus issued Alert Operators Transmission (AOT) A52W011–15 to provide inspection instructions.
>
> For the reason described above, this [EASA] AD requires repetitive inspections [for cracking] of the aft LDCD frame forks and, depending on findings, the accomplishment of corrective action(s).
>
> This [EASA] AD is considered interim action and further [EASA] AD action may follow.

Required actions include a one-time check of the LDCD clearances; and a one-time detailed visual inspection of hooks, eccentric bushes, x-stops; and corrective actions if necessary. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6894.

Related Service Information Under 1 CFR Part 51

Airbus has issued Alert Operators Transmission (AOT) A52W011–15, Revision 00, dated July 23, 2015. The service information describes procedures for repetitive HFEC inspections for cracking of the aft LDCD frame forks; a one-time check of the LDCD clearances; and a one-time detailed visual inspection of hooks, eccentric bushes, and x-stops; and corrective actions if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 58 airplanes of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $19,720, or $340 per product.

In addition, we estimate that any necessary follow-on actions would take about 15 work-hours and require parts costing $10,000, for a cost of $11,275 per product. We have no way of determining the number of aircraft that might need these actions.

Also, we estimate that the reporting requirement would take about 1 work-hour, for a cost of $85 per product.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this proposed AD is 2120–0056. The paperwork cost associated with this proposed AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this proposed AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2016–6894; Directorate Identifier 2015–NM–120–AD.

(a) Comments Due Date

We must receive comments by July 15, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A300 F4–605R and A300 F4–622R airplanes, certificated in any category, on which Airbus Modification 12046 has been embodied in production. Modification 12046 has been embodied in production on manufacturer serial numbers (MSNs) 0805 and above, except MSNs 0836, 0837, and 0838.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by a report of two adjacent frame forks that were found cracked on the aft lower deck cargo door (LDCD) of two Model A300–600F4 airplanes during scheduled maintenance. We are issuing this AD to detect and correct cracked or ruptured aft LDCD frames, which could allow loads to be transferred to the remaining structural elements. This condition could lead to the rupture of one or more vertical aft LDCD frames, which could result in reduced structural integrity of the aft LDCD.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection Requirements

At the applicable time specified in paragraph (h) of this AD, do the actions specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, in accordance with Airbus Alert Operators Transmission (AOT) A52W011–15, Revision 00, dated July 23, 2015.

(1) Do a one-time check of the aft LDCD clearances "U" and "V" between the latching

hooks and the eccentric bush at FR60 through FR64A. If any value outside tolerance is found, adjust the latching hook before further flight.

(2) Do a one-time detailed inspection to detect signs of wear of the hooks, eccentric bushes, and x-stops. If any wear is found, do all applicable corrective actions before further flight.

(3) Do a high frequency eddy current (HFEC) inspection to detect cracking at all frame fork stations of the aft LDCD. If any crack is found, replace the cracked frame fork before further flight. Repeat the HFEC inspection thereafter at intervals not to exceed 600 flight cycles.

(h) Compliance Times

At the later of the times specified in paragraphs (h)(1) and (h)(2) of this AD, do the actions required by paragraph (g) of this AD.

(1) Before the accumulation of 4,500 total flight cycles.

(2) At the applicable time specified by paragraph (h)(2)(i) or (h)(2)(ii) of this AD.

(i) For airplanes that have accumulated 8,000 or more total flight cycles as of the effective date this AD: Within 100 flight cycles after the effective date of this AD.

(ii) For airplanes that have accumulated fewer than 8,000 total flight cycles as of the effective date of this AD: Within 400 flight cycles after the effective date of this AD.

(i) Reporting

At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD, report the findings (both positive and negative) of the clearance check and detailed inspection required by paragraphs (g)(1) and (g)(2) of this AD, and each HFEC inspection required by paragraph (g)(3) of this AD. Send the report to Airbus in accordance with paragraph 7 of Airbus AOT A52W011–15, Revision 00, dated July 23, 2015. The report must include the applicable information specified in Appendix 2 of Airbus AOT A52W011–15, Revision 00, dated July 23, 2015.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 60 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 60 days after the effective date of this AD.

(j) Post-Repair Provisions

(1) Accomplishment of corrective actions required by this AD does not terminate the repetitive HFEC inspections required by paragraph (g)(3) of this AD.

(2) If all frame forks are replaced at the same time on the aft LDCD of an airplane, the next HFEC inspection required by paragraph (g)(3) of this AD can be deferred up to 4,500 flight cycles after the frame fork replacement.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Airworthiness Directive 2015–0152, dated July 24, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6894.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 18, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–12522 Filed 5–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6896; Directorate Identifier 2016–NM–016–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A318–111, and –112 airplanes, Model A319–111, –112, –113, –114, and –115 airplanes, Model A320–211, –212 and –214 airplanes, and Model A321–111, –112, –211, –212, and –213 airplanes. This proposed AD was prompted by a report of a production quality deficiency on the inner retainer installed on link assemblies of the engine mount, which could result in failure of the retainer. This proposed AD would require an inspection for, and replacement of, all non-conforming aft engine mount retainers. We are proposing this AD to detect and correct non-conforming retainers of the aft engine mount. This condition could result in the loss of the locking feature of the nuts of the inner and outer pins; loss of the pins will result in the aft mount engine link no longer being secured to the aft engine mount, possibly resulting in damage to the airplane and injury to persons on the ground.

DATES: We must receive comments on this proposed AD by July 15, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For Airbus service information identified in this NPRM, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com;* Internet: *http://www.airbus.com.*

For Goodrich service information identified in this NPRM, contact Goodrich Corporation, *Aerostructures,* 850 Lagoon Drive, Chula Vista, CA 91910–2098; telephone: 619–691–2719; email: *jan.lewis@goodrich.com;* Internet: *http://www.goodrich.com/TechPubs.*

You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6896; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1405; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6896; Directorate Identifier 2016–NM–016–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2016–0010R1, dated February 16, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for all Airbus Model A318–111, and –112 airplanes, Model A319–111, –112, –113, –114, and –115 airplanes, Model A320–211, –212, and –214 airplanes, and Model A321–111, –112, –211, –212, and –213 airplanes. The MCAI states:

> During in-service inspections, several aft engine mount inner retainers, fitted on aeroplanes equipped with CFM56–5A/5B engines, have been found broken. The results of the initial investigations highlighted that two different types of surface finish had been applied (respectively bright and dull material finishes), and that dull finish affects the strength of the retainer with regard to fatigue properties of the part. The pins which attach the engine link to the aft mount are secured by two nuts, which do not have a self-locking feature; this function is provided by the retainer brackets. In case of failure of the retainer bracket, the locking feature of the nuts of the inner and outer pins is lost; as a result, these nuts could subsequently become loose.
>
> In case of full loss of the nuts, there is the potential to also lose the pins, in which case the aft mount link will no longer be secured to the aft engine mount. The same locking feature is used for the three link assemblies of the aft mount.
>
> This condition, if not detected and corrected, could lead to in-flight loss of an aft mount link, possibly resulting in damage to the aeroplane and/or injury to persons on the ground.
>
> To address this potential unsafe condition, EASA issued AD 2013–0050 [*http://ad.easa.europa.eu/blob/easa_ad_2013_0050_superseded.pdf/AD_2013-0050_1*] [which corresponds to FAA AD 2014–14–06, Amendment 39–17901 (79 FR 42655, July 23, 2014)] to require a detailed inspection (DET) of the aft engine mount inner retainers and the replacement of all retainers with dull finish with retainers having a bright finish. Since that [EASA] AD was issued, inspection results showed that the main cause of crack initiation remains the vibration dynamic effect that affects both retainers, either with "dull" or "bright" surface finishes. The non-conforming "dull" surface's pitting is an aggravating factor. Consequently, EASA issued AD 2015–0021 [*http://ad.easa.europa.eu/blob/EASA_AD_2015_0021_superseded.pdf/AD_2015-0021_1*] [which corresponds to FAA NPRM Docket No. FAA–2015–3632; Directorate Identifier 2015–NM–023–AD (80 FR 55798, September 7, 2015)], retaining the requirements of EASA AD 2013–0050, which was superseded, and requiring repetitive DET of all aft engine mount inner retainers and, depending on findings, their replacement.
>
> Since that [EASA] AD was issued, a production quality deficiency was identified by Airbus and UTAS (formerly Goodrich Aerostructures, the engine mount retainer manufacturer) on the delivery of the inner retainer, Part Number (P/N) 238–0252–505, installed in the three Link assemblies of the engine mount fitted on CFM56–5A/5B engines. Airbus issued AOT A71N011–15 and SB A320–71–1070 providing a list of affected parts and applicable corrective actions.
>
> Consequently, EASA issued [a new] AD * * *, retaining the requirements of EASA AD 2015–0021, which was superseded, and in addition requiring the identification and replacement of all non-conforming aft engine mount inner retainers.
>
> Since that [new EASA] AD was issued, AOT A71N011–15 was revised, removing errors and reducing the list of affected parts.
>
> For the reason described above, this [EASA] AD is revised, adding reference to the revised AOT, and removing [EASA] AD appendixes, which content is included in the referenced Airbus documentation.
>
> This [EASA] AD is still considered to be an interim action, pending development and availability of a final solution.

This proposed AD would require an inspection for, and replacement of, all non-conforming aft engine mount retainers. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6896.

Related Service Information Under 1 CFR Part 51

We reviewed the following service information. This service information describes procedures for replacement of all non-conforming aft engine mount retainers.

- Airbus Service Bulletin A320–71–1070, dated November 23, 2015. This service information also describes procedures for an inspection for non-conforming aft engine mount retainers.
- Airbus Alert Operators Transmission (AOT) A71N011–15, Revision 01, dated February 1, 2016.
- Goodrich Service Bulletin RA32071–165, dated October 9, 2015.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 959 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	4 work-hours × $85 per hour = $340	$0	$340	Up to $326,060.

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	Up to 36 work-hours × $85 per hour = $3,060	$10,000	Up to $13,060.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2016–6896; Directorate Identifier 2016–NM–016–AD.

(a) Comments Due Date

We must receive comments by July 15, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus Model A318–111 and –112 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, and –115 airplanes.

(3) Airbus Model A320–211, –212, and –214 airplanes.

(4) Airbus Model A321–111, –112, –211, –212, and –213 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Reason

This AD was prompted by a report of a production quality deficiency on the inner retainer installed on link assemblies of the engine mount, which could result in failure of the retainer. We are issuing this AD to detect and correct non-conforming retainers of the aft engine mount. This condition could result in loss of the locking feature of the nuts of the inner and outer pins; loss of the pins will result in the aft mount engine link no longer being secured to the aft engine mount, possibly resulting in damage to the airplane and injury to persons on the ground.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection and Replacement

Within 2 months after the effective date of this AD, do an inspection to determine the part number of each engine mount inner retainer; and within 2 months after the effective date of this AD, replace each part that meets any of the criteria specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD. Do the inspection in accordance with the service information specified in paragraph (h)(1) of this AD. Do the replacement in accordance with the service information specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD. A review of airplane maintenance records is acceptable in lieu of the inspection required by this paragraph, if the part number of the engine mount inner retainer can be conclusively determined from that review.

(1) An aft engine mount having a serial number listed in table 1 of Airbus Alert Operators Transmission (AOT) A71N011–15, Rev 01, dated February 1, 2016.

(2) An engine mount inner retainer installed on an airplane between the first flight of the airplane or March 1, 2015 (whichever occurs later), and the effective date of this AD, and that can be identified by a purchase order (PO) listed in table 2 of Airbus AOT A71N011–15, Rev 01, dated February 1, 2016.

(3) An engine mount inner retainer installed on an airplane between the first flight of the airplane or March 1, 2015 (whichever occurs later), and the effective date of this AD, and that cannot be identified by a PO.

(h) Service Information for Actions Required by Paragraph (g) of This AD

Accomplish the replacement required by paragraph (g) of this AD in accordance with the service information specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD.

(1) The Accomplishment Instructions of Airbus Service Bulletin A320–71–1070, dated November 23, 2015.

(2) Paragraph 4.2.2, "Requirements," of Airbus AOT A71N011–15, Revision 01, dated February 1, 2016.

(3) The Accomplishment Instructions of Goodrich Service Bulletin RA32071–165, dated October 9, 2015.

(i) Credit for Previous Actions

This paragraph provides credit for the applicable actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus AOT A71N011–15, Revision 01, dated February 1, 2016, which is not incorporated by reference in this AD.

(j) Parts Installation Prohibition

As of the effective date of this AD, no person may install any part that meets any of the criteria specified in paragraph (j)(1), (j)(2), (j)(3) of this AD on any airplane.

(1) An aft engine mount having a serial number listed in table 1 of Airbus AOT A71N011–15, Rev 01, dated February 1, 2016.

(2) An engine mount inner retainer delivered through a PO listed in table 2 of Airbus AOT A71N011–15, Rev 01, dated February 1, 2016.

(3) An engine mount inner retainer delivered through an unidentified PO.

(k) Special Flight Permits

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1405; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2016–0010R1, dated February 16, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6896.

(2) For Airbus service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com;* Internet: *http://www.airbus.com.* For Goodrich service information identified in this AD, contact Goodrich Corporation, Aerostructures, 850 Lagoon Drive, Chula Vista, CA 91910–2098; telephone: 619–691–2719; email: *jan.lewis@goodrich.com;* Internet: *http://www.goodrich.com/TechPubs.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 20, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–12593 Filed 5–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–5650–P–12]

RIN 2577–AC90

Native American Housing Assistance and Self-Determination Act; Revisions to the Indian Housing Block Grant Program Formula

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Indian Housing Block Grant (IHBG) Program allocation formula authorized by section 302 of the Native American Housing Assistance and Self-Determination Act of 1996, as amended (NAHASDA). Through the IHBG Program, HUD provides federal housing assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-government. HUD negotiated the proposed rule with active tribal participation and using the procedures of the Negotiated Rulemaking Act of 1990. The proposed regulatory changes reflect the consensus decisions reached by HUD and the tribal representatives on ways to improve and clarify the current regulations governing the IHBG Program formula.

DATES: *Comment Due Date:* August 1, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. HUD will make all properly submitted comments and communications available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Randall R. Akers, Acting Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington, DC 20410–5000, telephone, (202) 402–7598 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) changed the way that housing assistance is provided to Native Americans. NAHASDA eliminated several separate assistance programs and replaced them with a single block grant program, known as the Indian Housing Block Grant (IHBG) Program. NAHASDA and its implementing regulations, codified at 24 CFR part 1000, recognize tribal self-determination and self-governance while establishing reasonable standards of accountability. Reflective of this, section 106 of NAHASDA provides that HUD shall develop implementing regulations with active tribal participation and using the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570).

NAHASDA has been amended and reauthorized several times since being signed into law in 1996. Following the enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (Pub. L. 110–411, approved October 14, 2008) (NAHASDA Reauthorization Act) HUD established a negotiated rulemaking committee on January 5, 2010 (75 FR 423), that focused on implementing the NAHASDA Reauthorization Act and prior amendments to NAHASDA. The negotiated rulemaking committee addressed all IHBG program regulations, except those provisions which govern the NAHASDA allocation formula codified in subpart D of 24 CFR part 1000. As a result of that negotiated rulemaking, HUD published a final rule on December 3, 2012 (77 FR 71513), that revised HUD regulations governing the IHBG Program and the Title VI Loan Guarantee program (under Title VI of NAHASDA, 25 U.S.C. 4191, *et seq.*) A separate negotiated rulemaking was subsequently begun to review the allocation formula regulations.

II. The IHBG Formula Negotiated Rulemaking Committee

On July 3, 2012 (77 FR 39452) and September 18, 2012 (77 FR 57544), HUD published notices in the **Federal Register** announcing HUD's intent to establish a negotiated rulemaking committee for the purposes of reviewing the regulations at 24 CFR part 1000, subpart D, and negotiating recommendations for a possible proposed rule modifying the IHBG formula. On June 12, 2013 (78 FR 35178), HUD published for public comment the names and affiliations of the committee's proposed members. On July 30, 2013 (78 FR 45903), after considering public comment on the proposed membership, HUD published a **Federal Register** notice announcing the final list of members of the IHBG Formula Negotiated Rulemaking Committee (Committee) and announcing the date of the first meeting of the Committee. The Committee membership consists of 24 designated representatives of tribal governments (or authorized designees of those tribal governments). The Committee membership reflected a balanced representation of Indian tribes, both geographically and based on size. In addition to the tribal members, there were two HUD representatives on the Committee. Committee meetings took place on August 27–28, 2013, September 17–19, 2013, April 23–24, 2014, June 11–13, 2014, July 29–31, 2014, August, 26–28, 2014, August 11–13, 2015, and January 26–27, 2016. The Committee agreed to operate based on consensus rulemaking and its approved charter and protocols. All of the Committee meetings were announced in the **Federal Register** and were open to the public.[1]

The Committee divided itself into multiple workgroups to analyze specified provisions of the IHBG formula and to draft any new or revised regulatory language it believed was necessary. A workgroup was responsible for analyzing the regulations for the Need component. Another workgroup reviewed the provisions governing the Formula Current Assisted Stock (FCAS) component. The workgroups were not authorized to reach any final or binding decisions but rather, reported to the full Committee. The draft regulatory language developed by the workgroups was then brought before the full Committee for review, amendment, and approval.

At the August 2014 meeting, an additional study group, the Data Study Group, was established to assess alternative data sources to the 2000 United States Decennial Census, which currently serves as the data source for the factors that are used to calculate the Need component of the allocation formula, including American Indian and Alaskan Native (AIAN) households with housing cost burdens, inadequate housing, low- and moderate-income AIAN households, and AIAN population. The Data Study Group was comprised of one Committee member from each of the six HUD-designated ONAP regions, plus one HUD representative. The Data Study Group members identified three technical experts and HUD provided a technical expert to assist with the work. Meetings of the Data Study Group were open to all Committee members and to the public. The Data Study Group met both telephonically and in-person and operated on a consensus basis.

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[1] See, 78 FR 45903 (July 30, 2013); 78 FR 54416 (September 4, 2013); 79 FR 14204 (March 13, 2014); 79 FR 28700 (May 23, 2014); 80 FR 30004 (May 26, 2015); 80 FR 33157 (June 11, 2015); 81 FR 881 (January 8, 2016).

In a **Federal Register** notice published on September 25, 2014 at 79 FR 57489, the Committee solicited suggestions from the public for potential data sources that would achieve an optimal balance of the following factors: recognition of tribal sovereignty; data relevant to eligible AIAN housing needs; and collected using a methodology that is objective, equitable, transparent, consistent, capable of being applied to all existing formula areas, statistically reliable, and replicable both over time and diverse geographies. The data would need to be collected and submitted by proficient persons or organizations with appropriate capacity and training and to be collected on a recurring basis at reasonable intervals or be capable of reliable statistical aging. Finally, the data source could not impose an undue administrative or financial burden upon tribes, needed to be cost-effective, and be capable of being fully evaluated by the Data Study Group within a one-year timeframe.

After receiving responses to the September 25, 2014 **Federal Register** notice, the Data Study Group identified 49 different data sources that were reviewed by the technical experts against a pre-determined set of screening criteria. Of the 49 nominated data sources, the Data Study Group agreed unanimously that 30 did not meet these criteria. The technical experts then prepared detailed characterizations of the remaining 19 data sources. Based on the characterization process and the discussion that followed, the Data Study Group rejected 10 more data sources that did not meet the pre-determined criteria. The Data Study Group moved nine remaining data sources forward for comprehensive evaluation. These included the following four sets of core data and five sets of support data:

Core Data

- Most Recent Decennial Census data collected by the U.S. Census Bureau
- American Community Survey collected by the U.S. Census Bureau
- National Tribal Survey to be Administered by a Federal Agency
- National Tribal Survey to be Administered by tribes

Support Data

- Tribal Enrollment Data
- Indian Health Service Population Projections
- U.S. Census Bureau Population Estimates
- Data Reported by IHBG Grant Recipients on Formula Response Form
- Total Development Costs (TDC)

The Data Study Group carefully considered the evaluation results of technical experts, had multiple discussions among its membership, including requests for clarification from the technical experts, and on July 31, 2015, issued its final report containing a recommendation for a data source or sources to be used in calculating the AIAN persons variable of the Need component of the IHBG funding formula, which it presented to the full Committee. Specifically, the Data Study Group recommended that the AIAN population be the greater of the most recently available American Community Survey (ACS), Decennial Census, or Challenge data, and that data no longer be aged. This proposal did not reach consensus at the full Committee level. The Data Study Group's full report can be found as a supporting document to this proposed rule at *www.Regulations.gov.*

III. This Proposed Rule

The Committee undertook a comprehensive review of the IHBG Formula. The Committee also reviewed any statutory changes that still needed to be addressed in the regulations. The Committee identified certain areas of the IHBG formula that required clarification, were outdated, or could be improved. With the exception of changes to § 1000.330(b)(ii), this proposed rule reflects the consensus decisions reached by the Committee during the negotiated rulemaking process on the best way to address these issues. The following section of this preamble provides a summary of the consensus recommended changes to the IHBG formula by this proposed rule.

A. Revision of Definition of Formula Area (§ 1000.302)

To conform § 1000.302 to the decision of the United States Court of Appeals for the Tenth Circuit in *United Keetoowah Band of Cherokee Indians of Oklahoma* v. *United States Department of Housing and Urban Development,*[2] HUD is revising the definition of formula area at 24 CFR 1000.302 by striking the reference to "court jurisdiction" in paragraph (2)(i) of the definition.

B. Continued Funding of Section 8 Units (§ 1000.306)

The proposed rule would make a technical amendment to § 1000.306 to eliminate paragraph (c), an outdated section that addressed how Section 8 units would be treated under the formula. Currently, § 1000.306(c) provides that, during the five-year review of the FCAS component of the formula, the count of units associated with expired contracts for tenant-based Section 8 rental assistance would be reduced by the same percentage as the current assisted rental stock has diminished since September 30, 1999. After HUD issued this regulation, section 502(a) of NAHASDA was amended by the Omnibus Indian Advancement Act (Pub. L. 106–568, approved December 27, 2000) (25 U.S.C. 4181(a)) to provide that housing subject to a contract for tenant-based Section 8 rental assistance prior to September 30, 1997, under the authority of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) is to be considered a dwelling unit for purposes of section 302(b)(1) of NAHASDA. As a result, the proposed rule removes paragraph (c) from § 1000.306.

C. Components of IHBG Formula (§ 1000.310)

The proposed rule would revise § 1000.310 to reflect that the IHBG formula would consist of four components: FCAS (§ 1000.316), Need (§ 1000.324), 1996 Minimum (§ 1000.340), and Undisbursed IHBG funds factor (§ 1000.342). FCAS, Need, and 1996 Minimum are existing components of the formula. The proposed addition of the Undisbursed IHBG funds factor is discussed below.

D. Conversions of Units From Low-Rent FCAS to Mutual Help or From Mutual Help to Low-Rent FCAS (§ 1000.316)

This proposed rule would clarify the type and eligibility of low-income dwelling units developed under the United States Housing Act of 1937 that are converted from Low-Rent to Mutual Help or, from Mutual Help to Low-Rent. The Committee proposed a new paragraph (c) to codify HUD's existing practice and establish the following. Units that were converted before NAHASDA's effective date of October 1, 1997, would count in the formula as the type of unit to which they were converted, and their FCAS eligibility would be evaluated on the basis of the type of unit to which they were converted. The amount of per unit FCAS funding for units that were converted after October 1, 1997, would be determined according to the unit's type specified in the original Annual Contributions Contract (ACC), *i.e.* the ACC in effect on September 30, 1997, while their FCAS eligibility would be evaluated on the basis of the type to which they were converted. Furthermore, the rule would require recipients to report conversions on their Formula Response Form. The Committee emphasized that the decision to convert a unit was a local decision for the tribe or TDHE (tribally designated housing entity) to make at its discretion.

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[2] 567 F.3d 1235 (10th Cir. 2009).

E. Mutual Help Unit Conveyance (§ 1000.318(a))

This proposed rule would clarify in § 1000.318 the FCAS eligibility of Mutual Help and Turnkey III units developed under the United States Housing Act of 1937 that are not conveyed within 25 years from the Date of Full Availability (DOFA plus 25 years). The proposed rule would provide specific milestones for demonstrating FCAS eligibility. Specifically, the proposed rule would provide that a unit may continue to be considered FCAS when conveyance of the unit is prevented by a legal impediment, if the tribe, TDHE, or Indian Housing Authority (IHA) has taken all other steps necessary to effectuate the conveyance and has made and documented reasonable efforts to remove the impediment. Mutual Help and Turnkey III units that are eligible for conveyance under the terms of their Mutual Help and Occupancy Agreement (MHOA) but not conveyed would continue to be considered FCAS if the delay in conveyance is caused by reasons beyond the control of the tribe, TDHE, or IHA. Section 302(b)(1)(D) of NAHASDA (25 U.S.C. 4152(b)(1)(D)) provides that the term "reasons beyond the control of a recipient" means, after the recipient makes "reasonable efforts" to resolve all issues necessary for conveyance, the conveyance is still delayed because there remain delays in obtaining or, the absence of title status reports, incorrect or inadequate legal descriptions or other legal documentation necessary for conveyance, clouds on title due to probate or intestacy or other court proceedings, or any other legal impediment. Thus, under this proposed rule, to demonstrate reasonable efforts, the tribe, TDHE or IHA would be required, no later than four months after the unit becomes eligible for conveyance, to create a written plan of action that describes the impediment and the actions it will take to resolve the impediment within 24 months after the date the unit became eligible for conveyance. If the legal impediment remains after that 24-month period, the unit would no longer be considered FCAS unless the tribe, TDHE, or IHA provides evidence from a third party, such as a Federal, State, or tribal court, or State or Federal agency, documenting that the impediment continues to prevent conveyance. Proposed § 1000.318(a)(3) would address Mutual Help and Turnkey III units that, as of the effective date of this regulation, have not been conveyed because timely conveyance was demonstrably beyond the tribe's control. These units would be considered to have become eligible to convey on the effective date of this regulation, triggering the time periods for creating a written plan of action to resolve the impediment and conveying the units or providing the third party evidence of continued impediment within the 24-month period. Section 1000.318(a)(3)(iv) would apply to units that have not been conveyed due to legal impediments, and would not apply to units that are eligible for conveyance before the effective date of this regulation but have not been conveyed for other reasons.

F. Demolition and Rebuilding of FCAS Units

At the August 2014 meeting, the Committee approved revising § 1000.318 to add a new paragraph (d) to establish the eligibility criteria for FCAS units that are demolished and rebuilt. Under section 302(b)(1)(C) of NAHASDA, if a unit is demolished and the recipient rebuilds the unit within 1-year of demolition of the unit, the unit may continue to be considered an FCAS unit under the formula. To implement this requirement, the Committee approved a regulatory provision that would permit the unit to continue to be considered FCAS if the recipient certifies in writing, within one-year from the date that the unit becomes damaged or deteriorated, that it has taken tangible action to demolish and rebuild the unit. In addition, the provision would require that reconstruction of the unit be completed within four years of the point at which demolition or replacement became necessary. At the end of the four year period, the unit would no longer be considered FCAS unless the recipient notified HUD that the reconstruction of the unit has been completed. If a recipient fails to rebuild a unit within the four-year time frame, the unit would nonetheless have been considered eligible as FCAS during those four years. This provision was intended to incentivize the reconstruction of properties in a condition of such significant disrepair that they must be demolished and rebuilt in order to preserve critical housing stock and ensure that housing remains available to assist low-income Indian families in the future.

Upon further review, HUD has determined that this provision may exceed the scope of section 302(b)(1)(C) of NAHASDA. The provision would have potentially allowed FCAS units that are rebuilt in a time period that exceeds 1-year from the time of demolition to remain FCAS units under the formula. While this proposed rule does not propose specific regulatory language addressing demolished FCAS units, HUD is seeking public comment on how to address this issue by regulation, while also remaining within the scope of section 302(b)(1)(C) of NAHASDA.

In this regard, HUD notes that during this negotiated rulemaking, the FCAS workgroup considered defining the term "demolition" in order to help clarify the point in time in which the 1-year period begins to run. For instance, the workgroup discussed whether to define demolition in cases involving natural disasters or fires as occurring at the time of the event. The workgroup also considered whether demolition should be defined as occurring only when a recipient voluntarily demolishes units in order to clear a site for a new replacement unit. HUD is specifically soliciting public comment, therefore, on these and alternative proposals that address section 302(b)(1)(C). Once HUD receives all public comments on this proposed rule, it is HUD's intent to afford the Committee, based on the public comment received, another opportunity at the final negotiated rulemaking session to consider specific regulatory language addressing this issue to be included in a final rule.

G. Overlapping Formula Areas (§ 1000.326)

This proposed rule would revise § 1000.326(a) to provide in cases where a State recognized tribe's formula area overlaps with the formula area of a Federally recognized Indian tribe, that the Federally recognized Indian tribe would receive the allocation for the formula area up to its population cap. The revision also provides that the State recognized tribe would receive the balance of the allocation, if any exists, up to its own population cap.

Section 1000.326 would also be revised to require that HUD follow the notice and comment procedures in the definition of "Formula Area" (§ 1000.302 (2)(ii)) upon receiving a request for expansion or redefinition of a tribe's formula area, if approving the request would create an overlap of formula areas with one or more other tribes. This proposed change is intended to ensure that tribes potentially affected by the request be notified and have the opportunity to comment on the request.

H. Minimum Total Grant Allocation of Carryover Funds (§ 1000.329)

Section 1000.329 is proposed as a new provision of the Need component of the IHBG formula. Section 1000.329 would provide for a minimum block grant allocation in the event that amounts available for allocation include carryover funds. This section would provide that allocations be adjusted to ensure all tribes a minimum block grant allocation of 0.011547 percent of that year's IHBG appropriation. HUD and the Committee estimated, based on current year appropriations, that approximately $3 million would be required to ensure that tribes receive a minimum allocation of approximately 0.011547 percent of the annual IHBG appropriation (close to $75,000, given historical appropriated amounts). Therefore, HUD would set aside an amount equal to the lesser of $3 million of available carryover funds or the entire amount of available carryover funds to increase allocations pursuant to this section. If set-aside carryover funds are insufficient to fund all eligible tribes at 0.011547 percent of that year's appropriations, the minimum total grant would be reduced to an amount which can be fully funded with the available set-aside carryover funds. Set-aside carryover funds that are not required to fund this additional allocation would be carried over to the subsequent year's formula. A tribe would be eligible for a minimum allocation under § 1000.329 if there are eligible households at or below 80 percent of median income in the tribe's formula area. For purposes of this proposed rule, "carryover funds" are defined as any grant funds voluntarily returned to the formula or not accepted by tribes in a fiscal year. The definition of carryover funds would not include any amounts that are returned to the IHBG formula voluntarily or involuntarily pursuant to § 1000.536, as a result of a HUD action under § 1000.532. The Committee considered and rejected including such amounts in the definition of carryover funds under this section.

I. Volatility Control of Changes in Need Component of Formula Caused by Introduction of New Data Source (§ 1000.331)

Section 1000.331 would be added to minimize and phase-in funding changes to allocations under the Need component of the formula resulting from the introduction of a new data source under § 1000.330, beginning in fiscal year 2018 (the first year that a new data source could be introduced). Under § 1000.331, if as a direct result of the introduction of a new data source, an Indian tribe's allocation under the Need component of the formula results in an allocation that is less than 90 percent of the amount it received under the Need component in the immediate previous fiscal year, the Indian tribe's Need allocation would be adjusted upward to an amount equal to 90 percent of the previous year's Need allocation. As proposed, this volatility control provision would not impact other adjustments under 24 CFR part 1000, including minimum funding, census challenges, formula area changes, or an increase in the total amount of funds available under the Need component. Section 1000.331 also proposes that in the event that HUD's IHBG appropriation is reduced and results in a decrease in the total amount of funds available under the Need component, an Indian tribe's adjusted allocation under § 1000.331(a) would be reduced by an amount proportionate to the reduced amount available for distribution under the Need component of the formula. Adjustments to the tribe's Need allocation under §§ 1000.331(b) or (c) would be made after adjustment of the tribe's allocation under § 1000.331(a).

J. Data Challenges and Appeals of HUD Formula Determinations (§ 1000.336)

This rule proposes to revise § 1000.336 to provide that an Indian tribe, TDHE, and HUD may challenge data used to determine the proposed undisbursed funds factor, § 1000.342. Specifically, this section would add the undisbursed funds factor to the list of IHBG formula data and HUD formula determinations that Indian tribes and TDHEs may appeal under the formula appeal procedures in § 1000.336. As the undisbursed funds factor is part of the formula for determining allocations, its application is not an enforcement action (under 24 CFR part 1000, subpart F).

In addition, § 1000.336(d) would be revised to clarify the format and provide the timeframes by which the tribe or TDHE must submit its appeal of the undisbursed funds factor. As proposed, this section would provide that the appeal must be in writing and submitted to HUD no later than 30 days after the tribe's or TDHE's receipt of HUD's application of the undisbursed funds factor.

This proposed rule also revises §§ 1000.336(e) and (f) for clarity. These revisions do not substantively amend these provisions.

K. Undisbursed IHBG Funds Factor (§ 1000.342)

The Committee proposed adding § 1000.342 to encourage tribes to timely expend their annual grants. Section 1000.342 would add an undisbursed funds factor to the IHBG formula. As proposed, the undisbursed funds factor would apply to Indian tribes whose initial allocation calculation is $5 million or more. A tribe's initial allocation calculation would include its FCAS, Need, the 1996 Minimum, and repayments or additions for past over- or under-funding for each Indian tribe (under 24 CFR part 1000, subpart D). Repayments or additions would not include repayments resulting from enforcement actions (24 CFR part 1000, subpart F).

Section § 1000.342(a) proposes that an Indian tribe would be subject to the undisbursed funds factor if it has undisbursed IHBG funds in an amount that is greater than the sum of its prior 3 years initial allocation calculations. Under proposed § 1000.342(c), for purposes of this section, "undisbursed IHBG funds" means the amount of IHBG funds allocated to an Indian tribe in HUD's line of credit control system (or successor system) on October 1 of the fiscal year for which the allocation is made. To determine the amount of undisbursed IHBG funds of a tribe under an umbrella TDHE (a recipient that has been designated to receive grant amounts by more than one Indian tribe), § 1000.342(c) proposes that the TDHE's total balance in HUD's line of credit control system on October 1 of the fiscal year for which the allocation is made would be multiplied by a percentage based on the tribe's proportional share of the initial allocation calculation of all tribes under the umbrella. Under proposed § 1000.342(b), if subject to the undisbursed funds factor in a given fiscal year, the Indian tribe's grant allocation would be the greater of the initial allocation calculation minus the amount of undisbursed IHBG funds that exceed the sum of the prior 3 years' initial allocation calculations, or its 1996 Minimum. Section 1000.342(d) also proposes that amounts subtracted from an initial allocation calculation under this section would be redistributed under the Need component of the formula to Indian tribes not subject to this section.

IV. Eighth Meeting of Negotiated Rulemaking Committee—Data Sources for the Need Variables (§ 1000.330)

The eighth meeting of the Committee, which took place on January 26–27, 2016, was convened at the request of the

Committee following HUD's issuance of a proposal on November 19, 2015, to resolve the data source issue. Specifically, HUD proposed the use of the ACS 5-year Estimates as the source of the data for the variables in paragraphs (a) through (f) of § 1000.324 and the most recent Decennial Census as the source for the total AIAN persons variable in § 1000.324(g). In each case, HUD proposed adjusting the data sources in order to address undercounts reported by the U.S. Census Bureau and the unique concerns resulting from conducting the ACS sample in Indian Country.

In an effort to address the concerns of the Committee regarding this proposal, HUD scheduled the eighth meeting to discuss the use of these data sources, vote on adjustments to data sources and approve the final preamble language. HUD's proposal is discussed in more detail later in this preamble.

Section 1000.330 describes the data source used for the Need variables in § 1000.324. Currently, § 1000.330 provides that the data sources for the Need variables "shall be data available that is collected in a uniform manner that can be confirmed and verified for all AIAN households and persons living in an identified area." Current § 1000.330 also states that "[i]nitially, the data used are the U.S. Decennial Census data." HUD originally codified § 1000.330 in 1998[3] and revised the section in 2007.[4] Currently, HUD uses the 2000 Decennial Census as the data source for the Needs variables.

Beginning in 2010, the U.S. Census Bureau discontinued use of the "long form" that, along with the short-form census questionnaire, went to a sample of households. The "long form" contained additional questions and provided more detailed socioeconomic information about the population. As part of this change, the more detailed socioeconomic information once collected by the long-form questionnaire is now collected by the ACS. The ACS potentially provides more current data regarding communities and is sent to a sample of the population on a rotating basis throughout the decade.

One impact of the discontinuation of the use of the "long form" is that data for six of the seven variables in § 1000.324 are no longer collected by the Decennial Census. During the course of this negotiated rulemaking the Committee extensively discussed revising § 1000.330 to use more current data sources, including the ACS, that might be used to determine Need under the formula. Because of the complexity of the issue, the Committee agreed by consensus to a procedure to identify and evaluate alternate data sources. Specifically, at the sixth negotiated rulemaking meeting in August 2014, the Committee agreed to provide itself with an additional year to study the issue by delaying implementation of any new data source until fiscal year 2018. At the same time, the Committee agreed to form the Data Study Group that would seek to identify and evaluate potential data sources that could replace the 2000 Decennial Census. The Committee provided that the Data Study Group would report its findings and recommendations by the seventh negotiated rulemaking scheduled for August 2015. The Committee also agreed that absent a consensus decision by the Committee regarding a new data source, HUD would make a final decision on a new data source that would be introduced starting in fiscal year 2018. The data source would be data collected in a uniform manner that can be confirmed and verified for all AIAN household and persons living in an identified area. Initially, the data used would be the most recent data available from the U.S. Census Bureau.

As discussed in this preamble, the Data Study Group conducted an extensive review of several potential data sources and reported the results of its work and its recommendations at the seventh negotiated rulemaking session. The Committee did not accept the recommendations of the Data Study Group and did not come to a consensus on a new data source. This inability to reach consensus was based in part on a concern expressed by several Committee members that the 2010 Decennial Census undercounted AIAN persons in some tribal areas and that the ACS suffered from similar inaccuracies.

Throughout the negotiated rulemaking process, HUD's Committee representatives made it known that while HUD was open to the results of the Data Study Group and worked toward reaching consensus on the data source, HUD considered the ACS as providing an up-to-date, reliable, comprehensive and accurate data source available for the variables in § 1000.324. In this regard, HUD made clear that the ACS were data "collected in a uniform manner that can be confirmed and verified for all AIAN households and persons living in an identified area." HUD also made it known that the 2010 Decennial Census also met these standards for the count of AIAN persons variable in § 1000.324(g). Accordingly, and consistent with the Committee's consensus decision to establish the Need study group, this rule proposes to use the ACS 5-Year Estimates as the source of the data for the variables in paragraphs (a) through (f) of § 1000.324, and the most recent Decennial Census as the source for the total AIAN person variable in § 1000.324(g). HUD believes that the use of these sources more accurately reflect Indian Country given the substantial changes that have taken place since 2000.

Notwithstanding, HUD recognized that the Data Study Group found evidence to support the concerns of a number of tribes that the 2010 Decennial Census has a significant undercount in some tribal areas and that the ACS suffers from a similar inaccuracy. HUD has further researched these concerns and identified three adjustments that mitigate these problems. These adjustments were the focus of eighth meeting of the Committee, which took place on January 26–27, 2016.

Undercount on reservations. After each Decennial Census, the U.S. Census Bureau conducts a follow-up survey to determine the extent that the Decennial Census under- or over-counted particular subgroups within the U.S. population. To address any undercount in the formula, HUD proposed in § 1000.330(b)(i) to increase the count of AIAN persons (single race; and single and multi-race) for all geographies identified in the most recent Decennial Census as having a statistically significant undercount confirmed by the U.S. Census Bureau. The U.S. Census Bureau determined in its post-Census 2010 enumeration that there was a statistically significant 4.88 percent undercount of AIAN persons living in Reservations and Trust Lands, including restricted fee land acquired under the Treaty of Guadalupe Hidalgo, but not in other tribal areas.[5] As proposed, this adjusted total would serve as the basis to determine the total AIAN person factor at § 1000.324(g) until the next Decennial Census is released. If a statistically significant undercount occurs in the next Decennial Census, the AIAN person count for § 1000.324(g) would be adjusted based on the amount of that undercount.

The eighth meeting of the Committee, considered this adjustment, and after consideration, voted on the adjustment.

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[3] 63 FR 12334, March 12, 1998.

[4] 72 FR 20018, April 20, 2007.

[5] See, *https://www.census.gov/coverage_measurement/pdfs/g04.pdf.* The U.S. Census Bureau also found a not statistically significant overcount of 3.86 percent for tribal areas off reservation (this including Oklahoma Tribal Statistical Area, Tribal Designated Statistical Area and the Alaska Native Village Statistical Area). HUD is not proposing that these tribal areas be adjusted down for the overcount because the overcount was not statistically significant.

The Committee proposed to modify the language to clarify that the count would be adjusted for a statistically significant undercount specifically for the AIAN population count. After this language was changed, the Committee reached consensus on this adjustment. In addition, the Committee considered a proposal to consider Indian Lands in Remote Alaska the same as Reservation and Trust Lands when it is determined that there has been a statistically significant undercount in Reservation and Trust Lands, unless the U.S. Census has included Remote Alaska in its coverage. This provision was proposed in order to address the fact that the U.S. Census Bureau's Census Coverage Measurement (CCM) Study did not include Indian Lands in Remote Alaska. The term "Remote Alaska" means Type of Enumeration Area as delineated by the U.S. Census Bureau for the 2010 Decennial Census. With the addition of this provision to § 1000.330(b)(i), the Committee reached consensus on this item.

Control total weights within the ACS. A critical component of any sample survey is to accurately weight completed surveys to reflect the full population the sample is drawn from. HUD recognizes that the weighting methodology used by the U.S. Census Bureau for ACS differs from what it used for the long-form data from the 2000 Census. For the 2000 Census long-form, the U.S. Census set the control totals at small geographies—places, tribal areas, Census Tracts, etc. As a result, a sample set of data for subgroup populations—such as a count of Native Americans in a tribal area—were generally very close to the count of those same variables from the short-form of the Decennial Census.

The U.S. Census Bureau adopted a different approach for the ACS, setting population control total weights at the county and place levels that have population estimates. That is, they are set at a higher level geography, mostly county and incorporated places, and not tribal areas. The ACS has adopted this approach because it establishes weights for all variables according to annual population estimates that are only available at these higher level geographies.

This change in methodology for setting control total weights can create a problem for the IHBG formula data for tribes. Without a small geography control total for the weights, the ACS can produce a population count for a subgroup in a small geography that is much different than the Decennial Census count for the same population.

To address this issue, HUD proposed in § 1000.330(b)(ii) to adjust the ACS data for the variables described in paragraphs (a) through (f) of § 1000.324 by the ratio of the adjusted total of AIAN persons based on the aged 2010 Decennial Census to the most recently available ACS count of AIAN persons as adjusted by § 1000.330(b)(i). HUD believes that this adjustment would make the ACS data methodology for small area geographic areas better align with the methodology used in the 2000 Decennial Census and provide a more accurate count of AIAN persons for smaller tribes. Some tribal members of the Committee did not agree.

During the eighth meeting of the Committee, the Committee considered this adjustment, and after consideration, voted on the adjustment. The Committee did not reach consensus on the vote for this adjustment. The majority of tribal Committee members did not support this adjustment. While some members supported this adjustment, the majority of tribal Committee members expressed concern with this proposal. Some members opposed the use of ACS as the data source for the formula and therefore voted against the adjustment. Other members supported the use of ACS data but believed that reweighting the data as proposed by HUD was not appropriate for other reasons. Specifically, some tribal Committee members believed that the undercount of one variable, AIAN persons, could not be properly assumed to translate to other variables. Notwithstanding, this rule proposes to adjust the ACS data for the variables described in paragraph (a) through (f) of § 1000.324 by the ratio of the adjusted total of AIAN persons based on the aged 2010 Decennial Census to the most recently available ACS count of AIAN persons as adjusted by § 1000.330(b)(i).

Aging of the Data. In addition to the adjustments to the 2010 Decennial Census and ACS data described in this preamble, HUD proposed revising the method of aging the data. Specifically, based on the work of the Data Study Group, HUD in § 1000.330(b)(i) proposed, beginning in fiscal year 2018, to age the data using the U.S. Census Bureau county level Population Estimates for Native Americans. In proposing this change, HUD notes that the Data Study Group determined that the Indian Health Service (IHS) projections based on birth and death rate, which is currently used to age the data, do not take into account migration and may result in both under and over estimates of population growth over time. While not perfect, the U.S. Census Bureau county level Population Estimates take into account migration and provide a more accurate count of AIAN persons. These Population Estimates do not come from the ACS. As a result, § 1000.330(b)(i) would state that the data source used to determine the AIAN person variable in § 1000.324(g) would be updated annually using the U.S. Census Bureau county level Population Estimates for Native Americans.

During the eighth meeting of the Committee, the Committee considered this adjustment, and after consideration, voted on the adjustment. The Committee reached consensus on this adjustment.

Transition Period in Fiscal Years 2016 and 2017. As agreed by the Committee by consensus, this proposed rule would delay implementation of these changes until fiscal year 2018. In this regard, § 1000.330(a) of this rule proposes to maintain the status quo during this period by providing that the data used to determine the Need variables would be the 2000 U.S. Decennial Census and any HUD-accepted Census challenges until fiscal year 2018. This section would also provide that this data would continue to be aged using IHS birth and death records. HUD believes that delaying the use of new data sources will help ensure that tribes do not encounter instability or lack of predictability for their grants when the rule takes effect. For this reason, HUD agreed to this delay.

Challenge Data. This proposed rule continues to maintain the right of Indian tribes to challenge the data described in this section pursuant to § 1000.336. Specifically, this proposed rule would redesignate currently codified § 1000.330(d) as § 1000.330(c) making minor, technical edits to ensure accuracy of the cross-reference.

V. Tribal Comments

After HUD's issuance of a proposal on November 19, 2015, and prior to the eighth meeting of Committee, HUD invited the tribal members of the Committee to submit comments on its proposal and on the preamble section describing its proposal. The comment period lasted from November 23, 2015, to December 23, 2015. HUD received comments from six Committee members during this time frame.

Several Committee members expressed support for the use of aged 2010 Decennial Census data for the AIAN population count. Those same commenters supported the use of ACS data for the remaining six Need variables.

Other commenters expressed dissatisfaction with the compensation of any undercounts and the use of a weighting adjustment for any undercounts. All of these tribal Committee members opined that HUD improperly made these unanticipated adjustments without consulting the Committee or allowing the Committee sufficient time to review. Some commenters noted that such adjustments are unnecessary since the Study Group found that improvements to the ACS data will be fully implemented upon the release of the 2012–2016 ACS data set. One commenter stated that if the Decennial Census and ACS were used as data sources, a generalized adjustment based on a 4.88 percent undercount would be insufficient in some areas and disproportionately beneficial in others. Another commenter pointed out that the use of the ACS as proposed in the rule will unfairly and significantly harm villages in rural Alaska. According to the commenter, these populations are substantially undercounted, but HUD is not applying a weighting adjustment to rural Alaska because the exact amount of the undercount is unknown.

One commenter expressed support for developing and using a federally- or tribally-administered national tribal survey to collect information concerning enrollment in a recognized tribe, in lieu of the Decennial Census or the ACS.

VI. Other Nonconsensus Items and Issues for Consideration

A. Current Assisted Stock Cost Adjustment Factor

In response to a discussion of the Allowable Expense Level adjustment factor in § 1000.320 during the 2005 IHBG Negotiated Rulemaking Session, HUD commissioned a study to assess the cost of operating 1937 Act housing programs across Indian Country and Alaska. The Indian Housing Operating Cost Study[6] examined the potential for using, among other sources, data from the U.S. Department of Agriculture's 515 program to determine how to weight the operating costs for different tribes. The USDA 515 data is derived from Section 515 units, which are affordable rental housing units in rural areas for very low-, low-, and moderate-income families; the elderly; and persons with disabilities. Because the data set includes operating expense data for projects in some rural counties that serve low- and very low-income households, it could be used to estimate costs in some tribes' formula area counties.

During the seventh Negotiated Rulemaking Session, the FCAS Working Group considered whether USDA 515 data could be used as an additional cost adjustment factor under § 1000.320. The Committee requested the USDA 515 data and requested that HUD calculate block grant allocations to all tribes under two scenarios: (1) Using a local area cost adjustment factor that is the greater of Fair Market Rents (FMR), Allowable Expense Level (AEL), and USDA 515 factors for each tribe, and (2) using a factor that is the greater of the FMR and USDA 515 factors. Ultimately, the Committee considered a proposal to revise § 1000.320 to use a local area cost adjustment factor that is the greater of FMR, AEL, and USDA 515 factors for each tribe. After discussion of the proposal, the Committee was unable to reach consensus on how to modify the Current Assisted Stock local cost adjustment in § 1000.320. Several Committee members raised concerns that the USDA 515 rural housing rental program did not provide cost data for some locations and others felt that insufficient data was available to determine how the addition of this factor would affect tribes nationwide.

B. Revise the Definition of AIAN

Although the Data Study Group did not reach consensus on the issue, it recommended that the Committee discuss whether or not to exclude South, Central, and Canadian AIAN persons from the data provided by the Decennial Census and the ACS for purposes of the IHBG formula. The study group made this recommendation after some study group members expressed concern that the IHBG is intended to serve only AIAN persons with a tribal affiliation in the United States. Because individuals having their origins in the indigenous peoples of Central America, South America, and Canada may or may not fall within the category of persons eligible to be served through the IHBG program, the study group referred the matter to the full Committee for consideration. The Committee discussed this issue as recommended, considered language drafted by the Drafting Committee, however the full Committee did not take the language up for a formal vote due to the withdrawal of the language.

VII. Question for Commenters

HUD understands that other organizations, including State and local governments or nonprofits, may use certain factors or data from the IHBG formula to inform their own work with Indian tribes. HUD requests public comment on what factors or data are used by these organizations and how the changes proposed to the IHBG formula would impact the work done by such organizations.

VIII. Tribal Recommendation

Non-HUD members of the Committee recommend HUD establish a joint task force that includes tribal and HUD representatives to develop a methodology to collect operating cost data from IHBG recipients in a consistent and accurate manner that could be used to adjust for local operating costs in the adjustment to the operating subsidy under the current assisted stock portion of the formula (*i.e.* replace the current factors under section 1000.320(a)). Non-HUD members recommend that resources other than IHBG funds be made available to fund technical experts and task force members and other costs that may be identified.

The Committee notes that for a variety of reasons, the Committee did not accommodate the examination of the Needs variables.

IX. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This proposed rule was determined to be a "significant regulatory action" as defined in section 3(f) of Executive Order 12866. The docket file is available for public inspection in the Regulations Division, Office of General Counsel, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202 402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll free, at 1–800–877–8339.

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[6] This study investigated the costs of operating 1937 Act housing programs in Indian Country and Alaska and determined the efficacy of the Allowable Expense Level factor in ascertaining these costs. For more information, the study can be found at: *http://ihbgrulemaking.firstpic.org/images/Library/ihoc_report_final%20423.pdf*.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN: I

Section reference	Number of respondents	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
§ 1000.316	226	1	0.2	45.2
§ 1000.318	212	1	0.5	106
§ 1000.336	10	1	4	40
Total Burden				191.2

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR–5650) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: (202) 395–6947, and

Reports Liaison Officer, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 451, 7th Street SW., Washington, DC 20410

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis for any rule that is subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The requirements of this rule apply to Indian tribal governments and their tribal housing authorities. Tribal governments and their tribal housing authorities are not covered by the definition of "small entities" under the RFA. Accordingly, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD's view that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule will not impose any federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll free, at 1–800–877–8339.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number (CFDA) for Indian Housing Block Grants is 14.867, and the CFDA for Title VI Federal Guarantees for Financing Tribal Housing Activities is 14.869.

List of Subjects in 24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 1000 as follows:

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

■ 1. The authority citation for 24 CFR part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.;* 42 U.S.C. 3535(d).

■ 2. In § 1000.302, revise paragraph (2)(i) of the definition of "Formula area" to read as follows:

§ 1000.302 What are the definitions applicable for the IHBG formula?

* * * * *

Formula area. * * *

(2) * * *

(i) For a geographic area not identified in paragraph (1) of this definition, and for expansion or re-definition of a geographic area from the prior year, including those identified in paragraph (1) of this definition, the Indian tribe must submit, on a form agreed to by HUD, information about the geographic area it wishes to include in its Formula Area, including proof that the Indian tribe, where applicable, has agreed to provide housing services pursuant to a Memorandum of Agreement (MOA) with the tribal and public governing entity or entities of the area, or has attempted to establish such an MOA, and is providing substantial housing services and will continue to expend or obligate funds for substantial housing services, as reflected in its Indian Housing Plan and Annual Performance Report for this purpose.

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■ 3. Revise § 1000.306 to read as follows:

§ 1000.306 How can the IHBG formula be modified?

(a) The IHBG formula can be modified upon development of a set of measurable and verifiable data directly related to Indian and Alaska Native housing need. Any data set developed shall be compiled with the consultation and involvement of Indian tribes and examined and/or implemented not later than 5 years from the date of issuance of these regulations and periodically thereafter.

(b) The IHBG formula shall be reviewed not later than May 21, 2012, to determine if a subsidy is needed to operate and maintain NAHASDA units or if any other changes are needed in respect to funding under the Formula Current Assisted Stock component of the formula.

■ 4. Revise § 1000.310 to read as follows:

§ 1000.310 What are the components of the IHBG formula?

The IHBG formula consists of four components:

(a) Formula Current Assisted Stock (FCAS) (§ 1000.316);

(b) Need (§ 1000.324);

(c) 1996 Minimum (§ 1000.340); and

(d) Undisbursed IHBG funds factor (§ 1000.342).

■ 5. In § 1000.316 add paragraph (c) to read as follows:

§ 1000.316 How is the Formula Current Assisted Stock (FCAS) Component developed?

* * * * *

(c) *Conversion.* Conversion of FCAS units from homeownership (Mutual Help or Turnkey III) to low-rent or from low-rent to a home ownership program.

(1) If units were converted before October 1, 1997, as evidenced by an amended ACC, then those units will be counted for formula funding and eligibility purposes as the type of unit to which they were converted.

(2) If units were converted on or after October 1, 1997, the following applies:

(i) *Funding type.* Units that converted after October 1, 1997 will be funded as the type of unit specified on the original ACC in effect on September 30, 1997.

(ii) *Continued FCAS eligibility.* Whether or not it is the first conversion, a unit converted after October 1, 1997, will be considered as the type converted to when determining continuing FCAS eligibility. A unit that is converted to low-rent will be treated as a low-rent unit for purposes of determining continuing FCAS eligibility. A unit that is converted to homeownership will be treated as a homeownership unit for purposes of determining continuing FCAS eligibility.

(3) The Indian tribe, TDHE, or IHA shall report conversions on the Formula Response Form.

■ 6. Revise § 1000.318 by adding paragraph (a)(3) to read as follows:

§ 1000.318 When do units under Formula Current Assisted Stock cease to be counted or expire from the inventory use for the formula?

(a) * * *

(3) A Mutual Help or Turnkey III unit not conveyed after the unit becomes eligible for conveyance by the terms of the MHOA may continue to be considered Formula Current Assisted Stock only if a legal impediment prevented conveyance; the legal impediment continues to exist; the tribe, TDHE, or IHA has taken all other steps necessary for conveyance and all that remains for conveyance is a resolution of the legal impediment; and the tribe, TDHE, or IHA made the following reasonable efforts to overcome the impediments:

(i) No later than four months after the unit becomes eligible for conveyance, the tribe, TDHE, or IHA creates a written plan of action, which includes a description of specific legal impediments as well as specific, ongoing, and appropriate actions for each applicable unit that have been taken and will be taken to resolve the legal impediments within a 24-month period; and

(ii) The tribe, TDHE, or IHA has carried out or is carrying out the written plan of action; and

(iii) The tribe, TDHE, or IHA has documented undertaking the plan of action.

(iv) No Mutual Help or Turnkey III unit will be considered FCAS 24 months after the date the unit became eligible for conveyance, unless the tribe, TDHE, or IHA provides evidence from a third party, such as a court or state or federal government agency, documenting that a legal impediment continues to prevent conveyance. FCAS units that have not been conveyed due to legal impediments on [effective date of this regulation] shall be treated as having become eligible for conveyance on [effective date of this regulation].

* * * * *

■ 7. In § 1000.326 revise paragraph (a)(3), redesignate paragraph (c) as paragraph (d) and add a new paragraph (c), to read as follows:

§ 1000.326 What if a formula area is served by more than one Indian tribe?

(a) * * *

(3) In cases where a State recognized tribe's formula area overlaps with the formula area of a Federally recognized Indian tribe, the Federally recognized Indian tribe receives the allocation for the formula area up to its population cap, and the State recognized tribe receives the balance of the overlapping area (if any) up to its population cap.

* * * * *

(c) Upon receiving a request for expansion or redefinition of a tribe's formula area, if approving the request would create an overlap, HUD shall follow the notice and comment procedures set forth in paragraph (2)(ii) of the definition of "Formula area" in § 1000.302.

* * * * *

■ 8. Add § 1000.329 to read as follows:

§ 1000.329 What is the minimum total grant allocated to a tribe if there is carryover funds available?

(a) If in any given year there are carryover funds, then HUD will hold the lesser amount of $3 million or available carryover funds for additional allocations to tribes with grant allocations of less than 0.011547 percent of that year's appropriations. All tribes eligible under this section shall receive a grant allocation equal to 0.011547 percent of that year's appropriations.

(b)(1) If the set-aside carryover funds are insufficient to fund all eligible tribes at 0.011547 percent of that year's appropriations, the minimum total grant shall be reduced to an amount which can be fully funded with the available set-aside carryover funds.

(2) If less than $3 million is necessary to fully fund tribes under paragraph (a) of this section, any remaining carryover amounts of the set aside shall be carried forward to the next year's formula.

(c) Certify in its Indian Housing Plan the presence of any eligible households at or below 80 percent of median income;

(d) For purposes of this section, carryover funds means grant funds voluntarily returned to the formula or not accepted by tribes in a fiscal year.

■ 9. Revise § 1000.330 to read as follows:

§ 1000.330 What are the data sources for the need variables?

(a) The sources of data for the Need variables shall be data that are available and collected in a uniform manner that can be confirmed and verified for all AIAN households and persons living in an identified area. Until fiscal year 2018, the data used are 2000 U.S. Decennial Census data and any HUD-accepted Census challenges. The 2000 U.S. Decennial Census data shall be adjusted annually using IHS projections based upon birth and death rate data provided by the National Center for Health Statistics.

(b)(i) Beginning fiscal year 2018, the data source used to determine the AIAN persons variable described in § 1000.324(g) shall be the most recent U.S. Decennial Census data adjusted for any statistically significant undercount for AIAN population confirmed by the U.S. Census Bureau and updated annually using the U.S. Census Bureau county level Population Estimates for Native Americans. For purposes of this paragraph, Indian Lands in Remote Alaska shall be treated as Reservation and Trust Lands, unless the U.S. Census Bureau includes Remote Alaska in their Census Coverage Measurement or comparable study. The data under this paragraph shall be updated annually using the U.S. Census Bureau county level Population Estimates for Native Americans.

(ii) Beginning fiscal year 2018, the data source used to determine the variables described in paragraphs (a) through (f) of § 1000.324 shall initially be the American Community Survey (ACS) 5-year Estimates adjusted by the ratio of the count of AIAN persons as provided by paragraph (b)(i) of this section to the ACS count of AIAN persons.

(c) Indian tribes may challenge the data described in this section pursuant to § 1000.336.

■ 10. Add § 1000.331 to read as follows:

§ 1000.331 How will the impacts from adoption of a new data source be minimized as the new data source is implemented?

(a) To minimize the impact of funding changes based on the introduction of a new data source under § 1000.330, in fiscal year 2018 and each year thereafter, if, solely as a direct result of the introduction of a new data source, an Indian tribe's allocation under the Need component of the formula is less than 90 percent of the amount it received under the Need component in the immediate previous fiscal year, the Indian tribe's Need allocation shall be adjusted up to an amount equal to 90 percent of the previous year's Need allocation.

(b) Nothing in this section shall impact other adjustments under this part, including minimum funding, census challenges, formula area changes, or an increase in the total amount of funds available under the Need component.

(c) In the event of a decrease in the total amount of funds available under the Need component, an Indian tribe's adjusted allocation under paragraph (a) of this section shall be reduced by an amount proportionate to the reduced amount available for distribution under the Need component of the formula.

(d) Adjustments under paragraph (b) or (c) of this section shall be made to a tribe's Need allocation after adjusting that allocation under paragraph (a) of this section.

■ 11. Revise § 1000.336 as follows:

■ a. In paragraph (a)(6) remove "and";

■ b. In paragraph (a)(7) remove the period and add in its place "and;"

■ c. Add paragraph (a)(8);

■ d. Revise paragraphs (d), (e), and (f).

§ 1000.336 How may an Indian tribe, TDHE, or HUD challenge data or appeal HUD formula determinations?

(a) * * *

(8) The undisbursed funds factor.

* * * * *

(d) An Indian tribe or TDHE that seeks to appeal data or a HUD formula determination, and has data in its possession that are acceptable to HUD, shall submit the challenge or appeal in writing with data and proper documentation to HUD. An Indian tribe or TDHE may appeal the undisbursed funds factor no later than 30 days after the receipt of the formula determination. Data used to challenge data contained in the U.S. Census must meet the requirements described in § 1000.330(a). Further, in order for a census challenge to be considered for the upcoming fiscal year allocation, documentation must be submitted by March 30th.

(e) HUD shall respond to all challenges or appeals no later than 45 days after receipt and either approve or deny the appeal in writing, setting forth the reasons for its decision.

(1) If HUD challenges the validity of the submitted data HUD and the Indian tribe or TDHE shall attempt in good faith to resolve any discrepancies so that such data may be included in the formula allocation.

(2) If HUD denies a challenge or appeal, the Indian tribe or TDHE may request reconsideration of HUD's denial within 30 calendar days of receipt of HUD's denial. The request shall be in writing and set forth justification for reconsideration.

(3) HUD shall in writing affirm or deny the Indian tribe's or TDHE's request for reconsideration, setting forth HUD's reasons for the decision, within 20 calendar days of receiving the

request. HUD's denial of a request for reconsideration shall constitute final agency action.

(4) If HUD approves the Indian tribe or TDHE's appeal, HUD will adjust to the Indian tribe's or TDHE's subsequent fiscal year allocation to include only the disputed fiscal year(s).

(f) In the event HUD questions whether the data contained in the formula accurately represents the Indian tribe's need, HUD shall request the Indian tribe to submit supporting documentation to justify the data and, if applicable, to provide a commitment to serve the population indicated in the geographic area.

■ 12. Add § 1000.342 to subpart D to read as follows:

§ 1000.342 Are undisbursed IHBG funds a factor in the grant formula?

Yes, beginning fiscal year 2018. After calculating the initial allocation calculation for the current fiscal year by calculating FCAS, Need, the 1996 Minimum, and repayments or additions for past over- or under-funding for each Indian tribe, the undisbursed funds factor shall be applied as follows:

(a) The undisbursed funds factor applies if an Indian tribe's initial allocation calculation is $5 million or more and the Indian tribe has undisbursed IHBG funds in an amount that is greater than the sum of the prior 3 years' initial allocation calculations.

(b) If subject to paragraph (a) of this section, the Indian tribe's grant allocation shall be the greater of the initial allocation calculation minus the amount of undisbursed IHBG funds that exceed the sum of the prior 3 years' initial allocation calculations, or its 1996 Minimum.

(c) For purposes of this section, "undisbursed IHBG funds" means the amount of IHBG funds allocated to an Indian tribe in HUD's line of credit control system (or successor system) on October 1 of the fiscal year for which the allocation is made. For Indian tribes under an umbrella TDHE (a recipient that has been designated to receive grant amounts by more than one Indian tribe), if the Indian tribe's initial allocation calculation is $5 million or more, its undisbursed IHBG funds is the amount calculated by multiplying the umbrella TDHE's total balance in HUD's line of credit control system (or successor system) on October 1 of the fiscal year for which the allocation is made by a percentage based on the Indian tribe's proportional share of the initial allocation calculation of all tribes under the umbrella.

(d) Amounts subtracted from an initial allocation calculation under this section shall be redistributed under the Need component among all Indian tribes not subject to paragraph (a) of this section (while also retaining the 1996 Minimum).

Dated: May 4, 2016.

Lourdes Castro Ramirez,

Principal Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2016–12596 Filed 5–27–16; 8:45 am]

BILLING CODE 4210–67–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 12–267; DA 16–367]

Comment Sought on Implementation of Transmitter Identification Requirements for Video Uplink Transmissions

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission (Commission) seeks comment on the appropriate schedule for implementing carrier identification requirements for digital video uplink transmissions, which were adopted by the Commission in August 2013.

DATES: Submit comments on or before June 30, 2016, and replies on or before July 15, 2016.

ADDRESSES: You may submit comments, identifying IB Docket No. 12–267, by any of the following means:

- *Federal Communications Commission's Web site: http://apps.fcc.gov/ecfs.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Clay DeCell, 202–418–0803.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, DA 16–367, released April 6, 2016. The full text of this document is available at *https://apps.fcc.gov/edocs_public/attachmatch/DA-16-367A1.pdf.* It is also available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities, send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Synopsis

By this Public Notice, we seek comment on the appropriate schedule for implementing carrier identification requirements for digital video uplink transmissions, as adopted by the Commission in August 2013.

Background. Since 1991, the Commission has required satellite uplink transmissions carrying "broadband" video information to include a signal identifying the source of the transmission. This signal, produced by an Automatic Transmitter Identification System (ATIS), allows satellite operators that may be receiving interference from the video transmission to more quickly identify and address the source of interference.

In August 2013, the Commission updated the ATIS requirement in 47 CFR 25.281 to better accommodate digitally modulated video transmissions. *Comprehensive Review of Licensing and Operating Rules for Satellite Services,* Report and Order, FCC 13–111, 28 FCC Rcd 12403, 12466–70, paras. 208–220 (2013). Specifically, for digital video uplinks from temporary-fixed earth stations, the Commission replaced the requirement to transmit a 7.1 megahertz subcarrier signal with a requirement to include a spread-spectrum ATIS message conforming to a modern industry standard.

The record in the 2013 proceeding indicated that the new ATIS requirement for digital video could be accommodated by replacing the equipment with new facilities incorporating an embedded modulator or upgrading existing earth station equipment with an external modulator. Based on this record, the Commission adopted a two-year grace period for operators to bring their equipment into compliance with the new ATIS rule in 47 CFR 25.281(b). The Commission concluded that two years was a sufficient implementation period, and declined a proposed five-year phase-in schedule, because it was not requiring the ATIS to be embedded and therefore not requiring existing facilities to be replaced.

Recent information from affected earth station operators, and independent staff market surveillance, indicate that suitable external modulators have not become widely available. Many earth station operators would therefore be unable to retro-fit their current transmitting equipment in order to comply with 47 CFR 25.281(b), and instead would need to replace the equipment at considerably greater expense than anticipated when the rule was adopted.

Temporary Waiver Order. On March 4, 2016, we issued a waiver of 47 CFR 25.281(b) for a period of one year, beginning on September 3, 2016, the date for compliance with the new requirement. *Temporary Waiver of Section 25.281(b) Transmitter Identification Requirements for Video Uplink Transmissions,* Order, DA 16–222 (IB 2016). The waiver was adopted to allow additional time for comment and development of an updated record on the appropriate implementation schedule for the new ATIS requirement.

Comment Sought. We now seek comment on the appropriate timeframe for implementation of the carrier identification requirement for digital video transmissions. In particular, we invite comment on the costs to both earth station operators and space station operators of further delaying the effective date of the requirement. We specifically request that commenters provide supporting materials such as technical documentation and price quotations for equipment compliant with the carrier identification requirement. We note that the World Broadcasting Unions have resolved that the ATIS (Carrier ID) requirement be implemented by no later than January 1, 2018.

Interested parties may file comments and reply comments in IB Docket No. 12–267 on or before the dates indicated in the **DATES** section of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Documents in IB Docket No. 12–267 are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW., Room CY A257, Washington, DC 20554.

Ex parte status. This matter will be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must comply with 47 CFR 1.1206(b).

Paperwork Reduction Act

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Federal Communications Commission.

Stephen Duall,

Chief, Policy Branch, International Bureau.

[FR Doc. 2016–12691 Filed 5–27–16; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 502, 512, 513, 532, and 552

[GSAR Case 2015–G512; Docket No. 2016–0010; Sequence No. 1]

RIN 3090–AJ67

General Services Administration Acquisition Regulation (GSAR); Unenforceable Commercial Supplier Agreement Terms

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to address common Commercial Supplier Agreement terms that are inconsistent with or create ambiguity with Federal Law.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before August 1, 2016 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to GSAR Case 2015–G512 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for "GSAR Case 2015–G512". Select the link "Comment Now" that corresponds with GSAR Case 2015–G215. Follow the instructions provided on the screen. Please include your name, company name (if any), and "GSAR Case 2015–G512" on all attached document(s).
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., 2nd Floor, ATTN: Ms. Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2015–G512, in all correspondence related to this case. All comments received will generally be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov* to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: For clarification about content, contact Ms. Janet Fry, General Services Acquisition Policy Division, by phone at 703–605–

3167 or by email at *Janet.Fry@gsa.gov*. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite GSAR Case 2015–G512.

SUPPLEMENTARY INFORMATION:

I. Background

A. Incompatibility of Commercial Supplier Agreements

GSA defines Commercial Supplier Agreements as terms and conditions that are customarily offered to the public by vendors of supplies or services that meet the definition of "commercial item" and are intended to create a binding legal obligation on the end user. Commercial Supplier Agreements are particularly common in information technology acquisitions, including acquisitions of commercial computer software and commercial technical data, but they may apply to any supply or service.

Customarily, commercial supplies and services are offered to the public under standard agreements that may take a variety of forms, including license agreements, terms of service (TOS), terms of sale or purchase, and similar agreements. These customary, standard Commercial Supplier Agreements typically contain terms and conditions that make sense when the purchaser is a private party but are inappropriate when the purchaser is the Federal Government.

The existence of Federally-incompatible terms in standard Commercial Supplier Agreements has long been recognized in FAR 27.405–3(b), which is limited to the acquisition of commercial computer software. This clause advises contracting officers to exercise caution when accepting a contractor's terms and conditions. The use of Commercial Supplier Agreements is not limited to information technology acquisitions; Commercial Supplier Agreements have become ubiquitous in a broad variety of contexts, from travel to telecommunications to financial services to building maintenance systems, including purchases below the simplified acquisition threshold.

Discrepancies between Commercial Supplier Agreements and Federal law or the Government's needs create recurrent points of inconsistency. Below are several examples of incompatible clauses that are commonly found in Commercial Supplier Agreements:

- Jurisdiction or venue clauses may require that disputes be resolved in a particular state or Federal court. Such clauses conflict with the sovereign immunity of the U.S. Government and cannot apply to litigation where the U.S. Government is a defendant because those disputes must be heard either in U.S. District Court (28 U.S.C. 1346) or the U.S. Court of Federal Claims (28 U.S.C. 1491).
- Automatic renewal clauses may automatically renew or extend contracts unless affirmative action is taken by the Government. Such clauses that require the obligation of funds prior to appropriation violate the restrictions of the Anti-Deficiency Act (31 U.S.C. 1341(a)(1)(B)).
- Termination clauses may allow the contractor to unilaterally terminate a contract if the Government is alleged to have breached the contract. Government contracts are subject to the Contract Disputes Act of 1978 (41 U.S.C. 601–613). The Contract Disputes Act requires a certain process for resolving disputes, including terminations, and that the "Contractor shall proceed diligently with performance of this contract, pending final resolution" under the terms of the FAR Disputes clause at 52.233–1.

Additionally, the current order of precedence contained in the Commercial Items clause at FAR 52.212–4 is not clear on prevailing terms, and potentially allows Commercial Supplier Agreements to supersede the terms of Federal contracts, especially in those areas where Federal law is implicated indirectly. As a result, industry and Government representatives must spend significant time and resources negotiating and tailoring Commercial Supplier Agreements to comply with Federal law and to ensure both parties have agreement on the contract terms.

B. Value of Addressing Incompatible Commercial Supplier Agreements

GSA has identified common illegal, improper or inappropriate Commercial Supplier Agreement terms that constitute the majority of the negotiated Commercial Supplier Agreement terms. The outcome of the negotiations regarding these identified terms is generally predetermined by rule of law, but GSA and contractors must spend significant time and resources to negotiate out these terms. By explicitly addressing common unenforceable terms within the Commercial Items clause at FAR 52.212–4 and clarifying prevailing terms in the order of precedence, it eliminates the need for negotiation on these identified terms, and makes clear to both parities the precedence of terms.

This approach will decrease the time needed for legal review prior to contract formation and will significantly reduce costs to both the Government and contractors. GSA believes that such an approach will benefit contractors, including small business concerns by (1) decreasing proposal costs associated with negotiating the identified unenforceable Commercial Supplier Agreement terms; (2) facilitating faster procurement and contract lead times, therefore decreasing the time it takes for contractors to make a return on their investment; (3) reducing administrative costs for companies that maintain alternate Federally compliant Commercial Supplier Agreements; and (4) for small business concerns it levels the playing field with larger competitors since negotiations will only be required if the Commercial Supplier Agreements contains objectionable clauses outside of those already identified in proposed clause. Additionally, this approach ensures consistent application and understanding of these unenforceable terms.

C. GSA Class Deviation

On July 31, 2015, GSA issued a class deviation to immediately address the order of precedence and Commercial Supplier Agreement terms that are incompatible with Federal law. The class deviation protects GSA and contractors by uniformly addressing common unacceptable terms, immediately reducing risk, reducing administrative cost and further streamlining the acquisition process for commercial-item supplies and services. Additionally the class deviation clarifies the precedence of terms to ensure both parties have a mutual understanding of the contract terms. For example, bilateral modifications to the commercial supplier agreements are only required for material changes to ensure the contracting officer is aware of and agrees to the changes.

A supplement to the class deviation was issued on September 30, 2015, to (1) reiterate that the change in the order of precedence protects GSA in the occasion where unilateral license updates could change government rights, and (2) clarify that Commercial Supplier Agreement terms can be negotiated except for the improper terms addressed in paragraph (w) of the GSAR clause 552.212–4. GSA refined the language in the class deviation while developing this proposed rule to further clarify (1) unauthorized obligations and other fees; (2) unilateral termination provisions; and (3) terms incorporated by reference. These issues are discussed in greater detail in Section II of this rule.

II. Discussion and Analysis

GSA is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to implement standard terms and conditions for the most common conflicting Commercial Supplier Agreement terms to minimize the need for the negotiation of the terms of Commercial Supplier Agreements on an individual basis. The proposed rule will add provisions to contracts making certain conflicting or inconsistent terms in a Commercial Supplier Agreement unenforceable, so long as an express exception is not authorized elsewhere by Federal statute. GSA is also proposing to amend the GSAR to modify the order of precedence contained in the Commercial Items clause (52.212–4) to make clear that all of the terms of the GSAR clause control in the event of a conflict with a Commercial Supplier Agreement unless both parties agree to specific terms during the course of negotiating the contract.

Both of the above changes will be accomplished by revising guidance and clauses contained throughout the GSAR. The specific changes contained in the proposed rule are as follows:

- A definition for Commercial Supplier Agreements is added at GSAR 502.101.
- GSAR 512.216 is created and clarifies that paragraph (u) of the Commercial Items clause at 552.212–4 prevents violation of the Anti-Deficiency Act.
- GSAR 512.301 is updated to prescribe the use of the deviated Commercial Items clause at 552.212–4 in lieu of FAR 52.212–4.
- GSAR 513.202 is created and will automatically apply the clause at 552.232–39 into all purchases below the micro-purchase threshold.
- GSAR 513.302–5 is created and requires the inclusion of GSAR 552.232–39 and 552.232–78 in all acquisitions for supplies or services that are offered under a Commercial Supplier Agreement.
- GSAR 532.705 is created and clarifies the definition of supplier license agreements as used in the Unenforceability of Unauthorized Obligations clause at FAR 32.705.
- GSAR 532.706–3 is created and directs contracting officers to utilize the clause at GSAR 552.232–39 in lieu of FAR 52.232–39 and prescribes the use of the clause Commercial Supplier Agreements—Unenforceable Clauses at 552.232–78.
- The Commercial Items clause at GSAR 552.212–4 is modified to include instructions to contracting officers on how to incorporate the change in language from FAR 52.212–4.
- The order of precedence contained in paragraph (s) of the Commercial Items clause at GSAR 552.212–4 is amended to ensure that all of the terms of GSAR 552.212–4 shall control over the terms of a Commercial Supplier Agreement by moving "Addenda to this solicitation or contract, including any license agreements for computer software" down two spaces in the order of precedence, behind "Solicitation provisions as awarded if there is a solicitation" and "Other paragraphs of this clause."
- Paragraph (u) of the Commercial Items clause at GSAR 552.212–4 is amended to (1) reflect the new Commercial Supplier Agreement definition contained in GSAR 502.101, (2) to expand coverage to "language or provision" in addition to "clause" in order to ensure that all Commercial Supplier Agreement terms are covered, regardless of terminology utilized, and (3) to include future fees, penalties, interest and legal costs as unauthorized obligations in addition to indemnification.
- Paragraph (w) of the Commercial Items clause at GSAR 552.212–4 is created to address the following commonplace unenforceable elements found in Commercial Supplier Agreements:
    - ○ Definition of contracting parties: Contract agreements are between the commercial supplier or licensor and the U.S. Government. Government employees or persons acting on behalf of the Government will not be bound in their personal capacity by the Commercial Supplier Agreement.
    - ○ Laws and disputes: Clauses that conflict with the sovereign immunity of the U.S. Government cannot apply to litigation where the U.S. Government is a defendant because those disputes must be heard either in U.S. District Court or the U.S. Court of Federal Claims. Commercial Supplier Agreement terms that require the resolution of a dispute in a forum or time period other than that expressly authorized by Federal law are deleted. Statutes of limitation on potential claims shall be governed by U.S. Government law.
    - ○ Continued Performance: Commercial suppliers may not unilaterally terminate or suspend a contract based upon a suspected breach of contract by the Government. Accepting terms that can be unilaterally terminated or revoked places the Government at risk of not receiving goods or services for money it has obligated on a contract or task order, if the price paid by the Government is non-refundable. This position is in violation of 31 U.S.C. 3324, which provides that payment under a contract may not exceed the value of a service or product already delivered. A license that is prematurely terminated outside of the regular dispute resolution procedures results in the Government not receiving the value of that license because the license is no longer delivered. The removal of the contractor's right to unilateral termination does not impair the contractor's ability to pursue remedies. It preserves all the legal remedies the contractor otherwise has under Federal law, including Contract Disputes Act claims. Remedies through the Contract Disputes Act or other applicable Federal statutes align with the continuing performance requirement set forth in subparagraph (d) Disputes.
    - ○ Arbitration; equitable or injunctive relief: A binding arbitration may not be enforced unless explicitly authorized by agency guidance or statute. Equitable remedies or injunctive relief such as attorney fees, cost or interest may only be awarded against the U.S. Government when expressly authorized by statute (*e.g.,* Prompt Payment Act).
    - ○ Additional Terms: Incorporation of terms by reference is allowed provided the full text of terms is provided with the offer. Unilateral modifications to the Commercial Supplier Agreement after the time of award may be allowed to the extent that the modified terms do not materially change the Government's rights or obligations, increase the Government's prices, decrease the level of service provided, or limit any Government right addressed elsewhere in the contract. A bilateral contract modification is required in order for any of the above described changes to be enforceable against the Government.
    - ○ Automatic renewals: Due to Anti-Deficiency Act restrictions, automatic contract renewal clauses are impermissible. Any such Commercial Supplier Agreement clauses are unenforceable.
    - ○ Indemnity (contractor assumes control of proceedings): Any clause requiring that the commercial supplier or licensor control any litigation arising from the Government's use of the contractor's supplies or services is deleted. Such representation when the Government is a party is reserved by statute for the U.S. Department of Justice.
    - ○ Audits (automatic liability for payment): Discrepancies found during an audit must comply with the invoicing procedures from the underlying contract. Disputed charges

must be resolved through the Disputes clause. Any audits requested by the commercial supplier or licensor will be performed at supplier or licensor's expense.

- ○ Taxes or surcharges: Any taxes or surcharges that will be passed along to the Government will be governed by the terms of the underlying contract. The cognizant contracting officer must make a determination of applicability of taxes whenever such a request is made.
- ○ Assignment of Commercial Supplier Agreement or Government contract by supplier: The contract, Commercial Supplier Agreement, party rights and party obligations may not be assigned or delegated without express Government approval. Payment to a third party financial institution may still be reassigned.
- ○ Confidentiality of Commercial Supplier Agreement terms and conditions: The content of the Commercial Supplier Agreement and the Federal Supply Schedule list price (if applicable) may not be deemed confidential. The Government may retain other marked confidential information as required by law, regulation or agency guidance, but will appropriately guard such confidential information.

- • GSAR 552.232–78 is created and addresses the same common unenforceable Commercial Supplier Agreement terms addressed in GSAR 552.212–4(w) described above.
- • GSAR 552.232–39 is created to amended the language of FAR 52.232–39 to reflect the definition of Commercial Supplier Agreements contained at GSAR 502.101, to expand coverage to "language or provision" in addition to "clause" in order to ensure that all Commercial Supplier Agreement terms are covered, regardless of terminology utilized, and to include future fees, penalties, interest and legal costs as unauthorized obligations in addition to indemnification.

This proposed rule will reduce risk by uniformly addressing common unacceptable Commercial Supplier Agreement terms, facilitate efficiency and effectiveness in the contracting process by reducing the administrative burden for the Government and industry, and promote competition by reducing barriers to industry, particularly for small businesses.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.* The analysis is summarized as follows:

> This effort is expected to reduce the overall burden on small entities by reducing the amount of time and resources required to negotiate Commercial Supplier Agreements. GSA believes that such an approach will disproportionately benefit small business concerns since they are less likely to retain in-house counsel and the GSAR revision will reduce or eliminate the costs associated with the negotiation of the identified unenforceable elements. Furthermore, this approach will allow small businesses that do not have Commercial Supplier Agreements tailored to Federal Government procurements to potentially utilize their otherwise compliant, standard Commercial Supplier Agreements when conducting business with the Government.

The Regulatory Secretariat Division will be submitting a copy of the Initial Regulatory Flexibility Analysis (IRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. GSA invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (GSAR Case 2015–G512) in correspondence.

V. Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 502, 512, 513, 532, and 552

Government procurement.

Dated: May 20, 2016.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.

Therefore, GSA proposes to amend 48 CFR parts 502, 512, 513, 532, and 552 as set forth below:

■ 1. Add part 502 to read as follows:

PART 502—DEFINITIONS OF WORDS AND TERMS

Subpart 502.1—Definitions

502.101 Definitions.

Authority: 40 U.S.C. 121(c).

Subpart 502.1—Definitions

502.101 Definitions.

Commercial supplier agreements means terms and conditions customarily offered to the public by vendors of supplies or services that meet the definition of "commercial item" set forth in FAR 2.101 and intended to create a binding legal obligation on the end user. Commercial supplier agreements are particularly common in information technology acquisitions, including acquisitions of commercial computer software and commercial technical data, but they may apply to any supply or service. The term applies—

(1) Regardless of the format or style of the document. For example, a commercial supplier agreement may be styled as standard terms of sale or lease, Terms of Service (TOS), End User License Agreement (EULA), or another similar legal instrument or agreement, and may be presented as part of a proposal or quotation responding to a solicitation for a contract or order;

(2) Regardless of the media or delivery mechanism used. For example, a commercial supplier agreement may be presented as one or more paper documents or may appear on a computer or other electronic device screen during a purchase, software installation, other product delivery, registration for a service, or another transaction.

PART 512—ACQUISITION OF COMMERCIAL ITEMS

■ 2. The authority citation for part 512 is revised to read as follows:

Authority: 40 U.S.C. 121(c).

■ 3. Add subpart 512.2, consisting of 512.216, to read as follows:

Subpart 512.2—Special Requirements for the Acquisition of Commercial Items

512.216 Unenforceability of unauthorized obligations.

GSA has a deviation to FAR 12.216 for this section to read as follows:

For commercial contracts, supplier license agreements are referred to as commercial supplier agreements (defined in 502.101). Paragraph (u) of clause 552.212–4 prevents violations of the Anti-Deficiency Act (31 U.S.C. 1341) for supplies or services acquired subject to a commercial supplier agreement.

■ 4. Amend section 512.301 by adding paragraph (e) to read as follows:

512.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(e) GSA has a deviation to revise certain paragraphs of FAR clause 52.212–4. Use clause 552.212–4 Contract Terms and Conditions—Commercial Items (FAR DEVIATION), for acquisitions of commercial items in lieu of FAR 52.212–4. The contracting officer may tailor this clause in accordance with FAR 12.302 and GSAM 512.302.

■ 5. Add part 513 to read as follows:

PART 513—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 513.2—Actions At or Below the Micro-Purchase Threshold

513.202 Unenforceability of unauthorized obligations in micro-purchases.

Subpart 513.3—Simplified Acquisition Methods

513.302–5 Clauses.

Authority: 40 U.S.C. 121(c).

Subpart 513.2—Actions At or Below the Micro-Purchase Threshold

513.202 Unenforceability of unauthorized obligations in micro-purchases.

Clause 552.232–39, Unenforceability of Unauthorized Obligations (FAR DEVIATION), will automatically apply to any micro-purchase in lieu of FAR 52.232–39 for supplies and services acquired subject to a commercial supplier agreement (as defined in 502.101).

Subpart 513.3—Simplified Acquisition Methods

513.302–5 Clauses.

Where the supplies or services are offered under a commercial supplier agreement (as defined in 502.101), the purchase order or modification shall incorporate clause 552.232–39, Unenforceability of Unauthorized Obligations (FAR DEVIATION), in lieu of FAR 52.232–39, and clause 552.232–78, Commercial Supplier Agreements–Unenforceable Clauses.

PART 532—CONTRACT FINANCING

■ 6. The authority citation for 48 CFR part 532 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 7. Add subpart 532.7, consisting of 532.705 and 532.706–3, to read as follows:

Subpart 532.7—Contract Funding

532.705 Unenforceability of unauthorized obligations.

Supplier license agreements defined in FAR 32.705 are equivalent to commercial supplier agreements defined in 502.101.

532.706–3 Clause for unenforceability of unauthorized obligations.

(a) The contracting officer shall utilize the clause at 552.232–39, Unenforceability of Unauthorized Obligations (FAR DEVIATION) in all solicitations and contracts in lieu of FAR 52.232–39.

(b) The contracting officer shall utilize the clause at 552.232–78, Commercial Supplier Agreements—Unenforceable Clauses, in all solicitations and contracts (including orders) when not using FAR part 12.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 9. Revise section 552.212–4 to read as follows.

552.212–4 Contract Terms and Conditions—Commercial Items (FAR DEVIATION).

As prescribed in 512.301(e), replace paragraphs (g)(2), (s), and (u) of FAR clause 52.212–4. Also, add paragraph (w) to FAR clause 52.212–4.

Contract Terms and Conditions—Commercial Items (FAR DEVIATION) (Date)

(g)(2) The due date for making invoice payments by the designated payment office is the later of the following two events:

(i) The 10th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(ii) The 10th day after Government acceptance of supplies delivered or services performed by the Contractor.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, Unauthorized Obligations, and Commercial Supplier Agreements–Unenforceable Clauses paragraphs of this clause.

(3) The clause at 52.212–5.

(4) Solicitation provisions if this is a solicitation.

(5) Other paragraphs of this clause.

(6) Addenda to this solicitation or contract, including any license agreements for computer software.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(u) *Unauthorized Obligations.* (1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any commercial supplier agreement (as defined in 502.101) that includes any language, provision, or clause requiring the Government to pay any future fees, penalties, interest, legal costs or to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such language, provision, or clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the commercial supplier agreement. If the commercial supplier agreement is invoked through an "I agree" click box or other comparable mechanism (*e.g.*, "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification or any other payment by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(w) *Commercial supplier agreements—unenforceable clauses.* When any supply or service acquired under this contract is subject to a commercial supplier agreement (as defined in 502.101), the following language shall be deemed incorporated into the commercial supplier agreement. As used herein, "this agreement" means the commercial supplier agreement:

(1) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:

(i) *Applicability.* This agreement is a part of a contract between the commercial supplier and the U.S. Government for the acquisition of the supply or service that necessitates a license (including all contracts, task orders, and delivery orders under FAR Part 12).

(ii) *End user.* This agreement shall bind the ordering activity as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

(iii) *Law and disputes.* This agreement is governed by Federal law.

(A) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

(B) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(C) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

(iv) *Continued performance.* The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by this contract. If the supplier or licensor believes the ordering activity to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in paragraph (d) (Disputes).

(v) *Arbitration; equitable or injunctive relief.* In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (*e.g.,* Prompt Payment Act or Equal Access to Justice Act).

(vi) *Additional terms.* (A) This commercial supplier agreement may incorporate additional terms by reference, provided that the full text of the terms are provided with the offer.

(B) After award, the contractor may unilaterally revise terms provided:

(*1*) Terms do not materially change government rights or obligations;

(*2*) Terms do not increase government prices;

(*3*) Terms do not decrease overall level of service; and

(*4*) Terms do not limit any other Government right addressed elsewhere in this contract.

(C) The order of precedence clause of this contract is not enforceable against the government, notwithstanding any software license terms unilaterally revised subsequent to award that is inconsistent with any material term or provision of this contract.

(vii) *No automatic renewals.* If any license or service tied to periodic payment is provided under this agreement (*e.g.,* annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express Government approval.

(viii) *Indemnification.* Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.

(ix) *Audits.* Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:

(A) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.

(B) This charge, if disputed by the ordering activity, will be resolved through the Disputes clause at 522.212–4(d); no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process.

(C) Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the Government.

(x) *Taxes or surcharges.* Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

(xi) *Non-assignment.* This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under subparagraph (b) of this clause at 552.212–4.

(xii) *Confidential information.* If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the Federal Supply Schedule price list shall be deemed "confidential information." Issues regarding release of "unit pricing" will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.

(2) If any language, provision, or clause of this agreement conflicts or is inconsistent with the preceding paragraph (w)(1), the language, provisions, or clause of paragraph (w)(1) shall prevail to the extent of such inconsistency.

(End of clause)

■ 10. Add section 552.232–39 to read as follows:

552.232–39 Unenforceability of Unauthorized Obligations (FAR DEVIATION).

As prescribed in 513.302–5 and 532.706–3, insert the following clause:

Unenforceability of Unauthorized Obligations (FAR DEVIATION) (Date)

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any commercial supplier agreement (as defined in 502.101) that includes any language, provision, or clause requiring the Government to pay any future fees, penalties, interest, legal costs or to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(1) Any such language, provision, or clause is unenforceable against the Government.

(2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such language, provision, or clause by virtue of it appearing in the commercial supplier agreement. If the commercial supplier agreement is invoked through an "I agree" click box or other comparable mechanism (*e.g.,* "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(3) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement.

(b) Paragraph (a) of this clause does not apply to indemnification or any other payment by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(End of clause)

■ 11. Add section 552.232–78 to read as follows:

552.232–78 Commercial Supplier Agreements—Unenforceable Clauses.

As prescribed in 513.302–5 and 532.706–3 insert the following clause:

Commercial Supplier Agreements—Unenforceable Clauses (Date)

(a) When any supply or service acquired under this contract is subject to a commercial supplier agreement, the following language shall be deemed incorporated into the commercial supplier agreement. As used herein, "this agreement" means the commercial supplier agreement:

(1) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:

(i) *Applicability.* This agreement is part of a contract between the commercial supplier and the U.S. Government for the acquisition of the supply or service that necessitates a license (including all contracts, task orders, and delivery orders under FAR Parts 13, 14 or 15).

(ii) *End user.* This agreement shall bind the ordering activity as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

(iii) *Law and disputes.* This agreement is governed by Federal law.

(A) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

(B) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(C) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

(iv) *Continued performance.* The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by this contract. If the supplier or licensor believes the ordering activity to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in subparagraph (d) (Disputes).

(v) *Arbitration; equitable or injunctive relief.* In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (*e.g.,* Prompt Payment Act or Equal Access to Justice Act).

(vi) *Additional terms.* (A) This commercial supplier agreement may incorporate additional terms by reference, provided that the full text of the terms are provided with the offer.

(B) After award the contractor may unilaterally revise terms provided:

(*1*) Terms do not materially change government rights or obligations; and

(*2*) Terms do not increase government prices; and

(*3*) Terms do not decrease overall level of service; and

(*4*) Terms do not limit any other Government right addressed elsewhere in this contract.

(C) The order of precedence clause of this contract notwithstanding, any software license terms unilaterally revised subsequent to award that is inconsistent with any material term or provision of this contract is not enforceable against the government.

(vii) *No automatic renewals.* If any license or service tied to periodic payment is provided under this agreement (*e.g.,* annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express Government approval.

(viii) *Indemnification.* Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.

(ix) *Audits.* Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:

(A) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.

(B) This charge, if disputed by the ordering activity, will be resolved through the Disputes clause at 52.233–1; no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process.

(C) Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the Government.

(x) *Taxes or surcharges.* Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

(xi) *Non-assignment.* This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under the clause at 52.232–23, Assignment of Claims.

(xii) *Confidential information.* If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the Federal Supply Schedule price list shall be deemed "confidential information." Issues regarding release of "unit pricing" will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.

(2) If any language, provision or clause of this agreement conflicts or is inconsistent with the preceding subparagraph (a)(1), the language, provisions, or clause of subparagraph (a)(1) shall prevail to the extent of such inconsistency.

(End of clause)

[FR Doc. 2016–12448 Filed 5–27–16; 8:45 am]

BILLING CODE 6820–61–P

Notices

Federal Register
Vol. 81, No. 104
Tuesday, May 31, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Land Exchanges

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with no revision of a currently approved information collection, OMB 0596–0105, Land Exchanges.

DATES: Comments must be received in writing on or before August 1, 2016 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Nancy Parachini, National Land Adjustment Program Manager, Lands, Forest Service, 201 14th Street SW., Suite 1SE, Mail Stop 1124, Washington, DC 20024.

Comments also may be submitted via facsimile to 703–605–5117 or by email to: *nparachini@fs.fed.us*.

The public may inspect comments received at Office of the Land Adjustment Program Manager—Lands Staff, Yates Building, 201 14th Street, SW., Washington, DC during normal business hours. Visitors are encouraged to call ahead to 202–205–3563 or 800–832–1355 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Nancy Parachini, Lands Adjustment Program Manager, 202–205–1238.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Land Exchanges.

OMB Number: 0596–0105.

Expiration Date of Approval: July 31, 2016.

Type of Request: Extension with revision of a currently approved information collection.

Abstract: Land exchanges are discretionary, voluntary real estate transactions between the Secretary of Agriculture (acting by and through the Forest Service) and a non-Federal exchange party (or parties). Land exchanges can be initiated by a non-Federal party (or parties), an agent of a landowner, a broker, a third party, or a non-Federal public agency.

Each land exchange requires preparation of an Agreement to Initiate as required by Title 36 Code of Federal Regulations (CFR), part 254, subpart A—section 254.4—Agreement to Initiate. The Agreement to Initiate document specifies the preliminary and non-binding intentions of the non-Federal land exchange party and the Forest Service in pursuing a land exchange. The Agreement to Initiate can contain such information as the description of properties being considered in the land exchange, an implementation schedule of action items, identification of the party responsible for each action item, as well as target dates for completion of each action item.

As the exchange proposal develops, the Forest Service and the non-Federal land exchange party may enter into a binding Exchange Agreement, pursuant to Title 36 CFR part 254, subpart A, section 254.14—Exchange Agreement. The Exchange Agreement documents the conditions that must be met to complete the exchange. The Exchange Agreement can contain information such as identification of parties, description of lands and interests to be exchanged, identification of all reserved and outstanding interest, and all other terms and conditions necessary to complete the exchange.

The Forest Service collects the information from the non-Federal party (or parties) necessary to complete the Agreement to Initiate and the Exchange Agreement. The information is collected by Forest Service personnel from parties involved in the exchange via telephone, email or in person. Data from this information collection is unique to each land exchange and is not available from other sources. No standardized forms are associated with this information collection.

Estimate of Annual Burden

Agreement to Initiate: 3 hours.

Exchange Agreement: 1 hour.

Type of Respondents: Non-Federal party (or parties) that can include landowners, agents of landowners, brokers, a third party or a non-Federal public agency.

Estimated Annual Number of Respondents: 25.

Estimated Annual Number of Responses per Respondent: 1.826.

Estimated Total Annual Burden on Respondents: 88.

Comment Is Invited

Comment is invited on: (1) whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: May 24, 2016.

Brian Ferebee,

Associate Deputy Chief National Forest System.

[FR Doc. 2016–12771 Filed 5–27–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Preliminary Rescission of 2014–2015 Antidumping Duty New Shipper Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") is conducting two new shipper reviews ("NSRs") of the antidumping duty order on multilayered wood flooring from the People's Republic of China ("PRC"). The NSRs cover two exporters and producers of subject merchandise, Dongtai Zhangshi Wood Industry Co., Ltd. ("Zhangshi") and Huzhou Muyun Wood Co., Ltd. ("Muyun"). The period of review ("POR") is December 1, 2014 through May 31, 2015. The Department preliminarily determines that both Zhangshi's sale and Muyun's sale to the United States were not *bona fide;* therefore, we intend to rescind these NSRs. Interested parties are invited to comment on the preliminary results of this review.

DATES: *Effective date:* May 31, 2016.

FOR FURTHER INFORMATION CONTACT: Robert Galantucci or Aleksandras Nakutis, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2923 or (202) 482–3147, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2015, the Department published a notice of initiation of two NSRs of the antidumping duty order on multilayered wood flooring from the PRC.[1] The Department subsequently issued an antidumping duty questionnaire, and supplemental questionnaires, to both Zhangshi and Muyun and received timely responses thereto.[2] Also, interested parties submitted comments on surrogate country and surrogate value selection. The Department extended the deadline for issuing the preliminary results of this review until May 20, 2016.[3]

Scope of the Order

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s) in combination with a core. The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. For a full description of the scope, *see* the Preliminary Decision Memorandum.[4] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Methodology

The Department is conducting this review in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act") and 19 CFR 351.214.[5] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum dated concurrently with this notice.

Preliminary Rescission of the Antidumping New Shipper Reviews of Muyun and Zhangshi

As discussed in the *Bona Fide* Sales Analysis Memoranda,[6] the Department preliminarily finds that both of the single sales made by Zhangshi and Muyun to the United States during the POR are not *bona fide* sales. The Department reached this conclusion based on the totality of circumstances surrounding each reported sale. Namely, with respect to Zhangshi's single sale, the sales price, the timing of the payment, the implementation of the terms of sale and the inconsistent responses from the importer call into question whether the sale is indicative of normal business practices. With respect to Muyun's single sale, we find that the sales price, the lack of record evidence demonstrating that Muyun's customer resold the merchandise for a profit, the timing of the sale and the negotiation period call into question whether the sale is indicative of normal business practices. Because the non-*bona fide* sales were the only reported sales of subject merchandise during the POR, and thus there are no reviewable transactions on this record, we are preliminarily rescinding the NSRs.[7] Because much of the factual information used in our analysis of Zhangshi's sale and Muyun's sale involves business proprietary information, a full discussion of the basis for our preliminary determination is set forth in the Memoranda to Abdelali Elouaradia, Director, AD/CVD Operations, Office IV, "Antidumping Duty New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: *Bona Fide* Sale Analysis for Dongtai Zhangshi Wood Industry Co., Ltd.," and "Antidumping Duty New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: *Bona Fide* Sale Analysis for Huzhou

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[1] *See Multilayered Wood Flooring From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review; 2014–2015,* 80 FR 45192 (July 29, 2015).

[2] The Department issued a brief supplemental questionnaire to each respondent on May 12, 2016. The deadline for the parties to respond was May 18, 2016. The Department received the responses on May 18, 2016, however due to the timing of the responses, the Department has not considered the responses for the preliminary results, but may consider this information for the final results.

[3] *See* the memoranda to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Maisha Cryor, International Trade Analyst, Office IV, Antidumping and Countervailing Duty Operations, entitled, "Multilayered Wood Flooring from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper Review" dated January 13, 2016 and the memorandum from Ron Lorentzen, Acting Assistant Secretary, for Enforcement and Compliance, entitled, "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas'" dated January 27, 2016.

[4] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for the Preliminary Rescission of the 2014–2015 Antidumping Duty Reviews of Multilayered Wood Flooring from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice ("Preliminary Decision Memorandum").

[5] On February 24, 2016, the President of the United States signed into law the Trade Facilitation and Trade Enforcement Act of 2015, Public Law 114–125 (Feb. 24, 2016), which made amendments to section 751(a)(2)(B) of the Act. These amendments apply to this determination.

[6] *See* Memorandum from Robert Galantucci, International Trade Analyst, Office IV AD/CVD Operations, to Abdelali Elouaradia, Director, Office IV, AD/CVD Operations entitled "Antidumping Duty New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: *Bona Fide* Sale Analysis for Dongtai Zhangshi Wood Industry Co., Ltd."; *see also* Memorandum from Aleksandras Nakutis, International Trade Analyst, Office IV AD/CVD Operations, to Abdelali Elouaradia, Director, Office IV, AD/CVD Operations entitled "Antidumping Duty New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: *Bona Fide* Sale Analysis for Huzhou Muyun Wood Co., Ltd." dated concurrently with and hereby adopted by this notice (collectively, "*Bona Fide* Sales Analysis Memoranda").

[7] *See* 19 CFR 351.213(d)(3).

Muyun Wood Co., Ltd.," dated May 20, 2015, which are on the record of this proceeding.

Public Comment

Interested parties may submit case briefs no later than 30 days after the date of publication of the preliminary results of review.[8] Rebuttals to case briefs may be filed no later than five days after the briefs are filed. All rebuttal comments must be limited to comments raised in the case briefs.[9]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement & Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice.[10] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Oral argument presentations will be limited to issues raised in the briefs. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, at a date and time to be determined.[11] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, with limited exceptions, must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5 p.m. Eastern Time ("ET") on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with the APO/Dockets Unit in Room 18022, and stamped with the date and time of receipt by 5 p.m. ET on the due date.[12]

The Department intends to issue the final results of these NSRs, which will include the results of its analysis of issues raised in any briefs received, no later than 90 days after the date these preliminary results of review are issued pursuant to section 751(a)(2)(B)(iv) of the Act.

Assessment Rates

If the Department proceeds to a final rescission of Zhangshi and Muyun's NSRs, the assessment rate to which Zhangshi and Muyun's shipments will be subject will not be affected by this review. However, the Department initiated an administrative review of the antidumping duty order on multilayered wood flooring from the PRC covering numerous exporters, including Zhangshi and Muyun, for the period December 1, 2014 through November 30, 2015 which encompasses the POR of these NSRs.[13] Thus, if the Department proceeds to a final rescission, we will instruct U.S. Customs and Border Protection ("CBP") to continue to suspend entries during the period December 1, 2014 through November 30, 2015 of subject merchandise exported by Zhangshi and Muyun until CBP receives instructions relating to the administrative review of this order covering the period December 1, 2014 through November 30, 2015.

If the Department does not proceed to a final rescission of this new shipper review, pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) assessment rates based on the final results of this review. However, pursuant to the Department's refinement to its assessment practice in non-market economy cases, for entries that were not reported in the U.S. sales database submitted by Zhangshi or Muyun, the Department will instruct CBP to liquidate such entries at the PRC-wide rate.[14]

Cash Deposit Requirements

Effective upon publication of the final rescission or the final results of these NSRs, pursuant to section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e), the Department will instruct CBP to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise by Zhangshi and Muyun. If the Department proceeds to a final rescission of these NSRs, the cash deposit rate will continue to be the PRC-wide rate for Zhangshi and Muyun because the Department will not have determined an individual margin of dumping for either company. If the Department issues final results for these NSRs, the Department will instruct CBP to collect cash deposits, effective upon the publication of the final results, at the rates established therein.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: May 20, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Discussion of the Methodology
5. Conclusion

[FR Doc. 2016–12753 Filed 5–27–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE653

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Salmon Technical Team (STT) and Salmon Advisory Subpanel (SAS) will hold a webinar, which is open to the public, to discuss and make recommendations on issues on the Council's June 2016 agenda.

DATES: The webinar will be held on Friday, June 17, 2016, from 1:30 p.m. until business for the day is complete.

ADDRESSES: To attend the webinar, visit: *http://www.gotomeeting.com/online/webinar/join-webinar*. Enter the Webinar ID, which is 142–415–203, and your name and email address (required). After logging in to the webinar, please: dial this TOLL number +1 (631) 992–3221 (not a toll-free number), enter the Attendee phone audio access code 774–

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[8] *See* 19 CFR 351.309(c).

[9] *See* 19 CFR 351.309(d).

[10] *See* 19 CFR 351.310(c).

[11] *See* 19 CFR 351.310(d).

[12] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

[13] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 6832 (February 9, 2016).

[14] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

887–965, and then enter your audio phone pin (shown after joining the webinar). Participants are encouraged to use their telephone, as this is the best practice to avoid technical issues and excessive feedback. (See *http://www.pcouncil.org/wp-content/uploads/PFMC_Audio_Diagram_GoToMeeting.pdf.*) System Requirements for PC-based attendees: Required: Windows® 7, Vista, or XP; for Mac®-based attendees: Required: Mac OS® X 10.5 or newer; and for mobile attendees: iPhone®, iPad®, Android™ phone or Android tablet (See the GoToMeeting Webinar Apps). You may send an email to *kris.kleinschmidt@noaa.gov* or contact him at (503) 820–2280, extension 425 for technical assistance. A public listening station will also be provided at the Pacific Council office.

Council address: Pacific Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, Pacific Council; telephone: (503) 820–2414.

SUPPLEMENTARY INFORMATION: The STT and SAS will discuss and make recommendations on items on the Council's June 2016 meeting agenda. Major topics include, but are not limited to: Sacramento River Winter Chinook Harvest Control Rule Update, Scoping of Pacific Halibut Catch Share Plan Allocation Changes, and Western Region Climate Change Action Plan. The STT and SAS may also address one or more of the Council's scheduled Administrative Matters. Public comments during the webinar will be received from attendees at the discretion of the STT and SAS Chairs.

Although nonemergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2425 at least 5 days prior to the meeting date.

Dated: May 25, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–12714 Filed 5–27–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Dealer and Interview Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 1, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. David Gloeckner, (305) 361–4257 or *david.gloeckner@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for revision of a current information collection.

Fishery quotas are established for many species in the fishery management plans developed by the Gulf of Mexico Reef Fish Fishery Management Council, the South Atlantic Fishery Management Council, and The Caribbean Fishery Management Council. The Southeast Fisheries Science Center has been delegated the responsibility to monitor these quotas. To do so in a timely manner, seafood dealers that handle these species are required to report the purchases (landings) of these species. The frequency of these reporting requirements varies depending on the magnitude of the quota (*e.g.*, lower quota usually require more frequent reporting) and the intensity of fishing effort. The most common reporting frequency is twice a month; however, some fishery quotas, (*e.g.*, the mackerel gill net) necessitate weekly or by the trip reporting.

In addition, information collection included in this family of forms includes interview with fishermen to gather information on the fishing effort, location and type of gear used on individual trips. This data collection is conducted for a subsample of the fishing trips and vessel/trips in selected commercial fisheries in the Southeast region and commercial fisheries of the U.S. Caribbean. Fishing trips and individuals are selected at random to provide a viable statistical sample. These data are used for scientific analyses that support critical conservation and management decisions made by national and international fishery management organizations.

A revision to this collection is requested because the Caribbean Fishery Management Council has asked that commercial trip interviews be conducted for the fisheries of the Caribbean. In order to support this request, the SEFSC has developed a sampling procedure which will require additional commercial trip interview with fishers in the Caribbean. This data collection is authorized under 50 CFR part 622.5.

II. Method of Collection

Dealer reports may be emailed, faxed or mailed. Information from fisherman is obtained by face-to-face interviews.

III. Data

OMB Number: 0648–0013.

Form Number: None.

Type of Review: Regular submission (revision of a current information collection).

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 7,580.

Estimated Time per Response:

Dealer reporting for monitoring Federal fishery annual catch limits (ACLs): Coastal fisheries dealers reporting, 10 minutes; mackerel dealer reporting (non-gillnet), 10 minutes; mackerel dealer reporting (gillnet), 10 minutes; mackerel vessel reporting (gillnet), 10 minutes; wreckfish dealer reporting, 10 minutes.

Bioprofile data from Trip Interview programs (TIP): Shrimp Interviews,10 minutes; Fin Fish interviews, 10 minutes.

Estimated Total Annual Burden Hours: 3,404.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 25, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–12692 Filed 5–27–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluations of National Estuarine Research Reserves and Coastal Management Programs

AGENCY: Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management will hold a public meeting to solicit comments on the performance evaluation of the Tijuana River National Estuarine Research Reserve. Notice is also hereby given of the availability of the final evaluation findings for the Florida Coastal Management Program.

DATES: *Tijuana River National Estuarine Research Reserve Evaluation:* The public meeting will be held on Tuesday, July 19, 2016, and written comments must be received on or before Friday, July 29, 2016.

For specific dates, times, and locations of the public meetings, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may use any of the following methods to submit comments regarding the reserve NOAA intends to evaluate:

Public Meeting and Oral Comments: Public meetings will be held in Imperial City, California. For specific locations, see **SUPPLEMENTARY INFORMATION.**

Written Comments: Please direct written comments to Ralph Cantral, Evaluator, Policy, Planning and Communications, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, or email comments to *Ralph.Cantral@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Evaluator, Policy, Planning and Communications, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, or *Ralph.Cantral@noaa.gov.* Copies of the final evaluation findings and related material (including past performance reports and notices prepared by NOAA's Office for Coastal Management) may be obtained upon written request by contacting Ralph Cantral. Copies of the final evaluation findings may also be downloaded or viewed on the Internet at *http://coast.noaa.gov/czm/evaluations/evaluation_findings/index.html.*

SUPPLEMENTARY INFORMATION: Sections 312 and 315 of the Coastal Zone Management Act (CZMA) require NOAA to conduct periodic evaluations of federally approved national estuarine research reserves. The process includes a public meeting, consideration of written public comments and consultations with interested Federal, state, and local agencies and members of the public. During the evaluation, NOAA will consider the extent to which the state has met the national objectives, adhered to the final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. When the evaluation is completed, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

Specific information on the periodic evaluation of reserves that are the subject of this notice are detailed below:

Tijuana River National Estuarine Research Reserve Evaluation

You may participate or submit oral comments at the public meeting scheduled as follows:

Date: July 19, 2016.

Time: 6 p.m., local time.

Location: 301 Caspian Way, Imperial Beach, California 91932.

Written comments must be received on or before July 29, 2016.

Availability of Final Evaluation Findings of Other State and Territorial Coastal Programs

The NOAA Office for Coastal Management has completed review of the Coastal Zone Management Program evaluations for the state of Florida. The state was found to be implementing and enforcing their federally approved coastal management program, addressing the national coastal management objectives identified in CZMA Section 303(2)(A)-(K), and adhering to the programmatic terms of their financial assistance awards. Copies of the final evaluation findings may be downloaded at *http://coast.noaa.gov/czm/evaluations/evaluation_findings/index.html* or by submitting a written request to the person identified under **FOR FURTHER INFORMATION CONTACT.**

Dated: May 23, 2016.

John King,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

[FR Doc. 2016–12783 Filed 5–27–16; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE654

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad hoc Sacramento River Winter Chinook Workgroup (SRWCW) will hold a webinar, which is open to the public, to discuss progress on development of potential harvest control rule options.

DATES: The webinar will be held on Wednesday, June 15, from 1:30 p.m. until business for the day is complete.

ADDRESSES: To attend the webinar, visit: *http://www.gotomeeting.com/online/webinar/join-webinar.* Enter the Webinar ID, which is 131–571–715, and your name and email address (required). After logging in to the webinar, please: Dial this TOLL number +1 (562) 247–8422 (not a toll-free number), enter the

Attendee phone audio access code 684–586–345, and then enter your audio phone pin (shown after joining the webinar). Participants are encouraged to use their telephone, as this is the best practice to avoid technical issues and excessive feedback. (See *http://www.pcouncil.org/wp-content/uploads/PFMC_Audio_Diagram_GoToMeeting.pdf*). System Requirements for PC-based attendees: Required: Windows® 7, Vista, or XP; for Mac®-based attendees: Required: Mac OS® X 10.5 or newer; and for mobile attendees: iPhone®, iPad®, Android™ phone or Android tablet (See the GoToMeeting Webinar Apps). You may send an email to *kris.kleinschmidt@noaa.gov* or contact him at (503) 820–2280, extension 425 for technical assistance. A public listening station will also be provided at the Pacific Council office.

Council address: Pacific Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, Pacific Council; telephone: (503) 820–2414.

SUPPLEMENTARY INFORMATION: The SRWCW will discuss progress on the development of new indicators and predictors of Sacramento River winter Chinook ocean abundance, review methods for evaluating the relative risks and benefits of alternative harvest control rules, prepare a report for the Council's June 2016 meeting, and discuss future meeting plans.

Although nonemergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280, extension 425 at least 5 days prior to the meeting date.

Dated: May 25, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–12715 Filed 5–27–16; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0017, Market Surveys

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act ("PRA"), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment. This notice solicits comments on market investigations.

DATES: Comments must be submitted on or before August 1, 2016.

ADDRESSES: You may submit comments, identified by "Market Surveys," Collection Number 3038–0017, by any of the following methods:

- The Agency's Web site, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method.

- *Federal eRulemaking Portal: http://www.regulations.gov/.* Follow the instructions for submitting comments through the Portal.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Gary J Martinaitis, Associate Deputy Director, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5209; email: *gmartinaitis@cftc.gov,* and refer to OMB Control No. 3038–0017.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of Information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

Title: Market Surveys (OMB Control No. 3038–0017). This is a request for extension of a currently approved information collection.

Abstract: Under Commission Rule 21.02, upon call by the Commission, information must be furnished related to futures or options positions held or introduced by futures commission merchants, members of contract markets, introducing brokers, foreign brokers, and for options positions, by each reporting market. This rule is designed to assist the Commission in prevention of market manipulation and is promulgated pursuant to the Commission's rulemaking authority contained in section 8a of the Commodity Exchange Act, 7 U.S.C. 12a (2010).

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The respondent burden for this collection is estimated to be as follows.

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
21.02	400	Annually	400	1.75	700

Respondents/Affected Entities: futures commission merchants, members of contract markets, introducing brokers, foreign brokers, contract markets.

Estimated number of respondents: 400.

Estimated total annual burden on respondents: 700 hours.

Frequency of collection: Annually.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: May 25, 2016.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2016–12707 Filed 5–27–16; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability of Draft Environmental Impact Statement for the Continental United States Interceptor Site

AGENCY: Missile Defense Agency, Department of Defense.

ACTION: Notice of availability and notice of activity in Wetlands as required by Executive Order 11990 (*Protection of Wetlands*).

SUMMARY: The Missile Defense Agency (MDA) announces the availability of the Draft Environmental Impact Statement (EIS) for the potential deployment of a Continental United States (CONUS) Interceptor Site (CIS). A CIS Draft EIS was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA and assesses the impacts of the potential deployment of a CIS.

As required by the fiscal year 2013 National Defense Authorization Act, the MDA has conducted extensive surveys and assessments for development of a Draft EIS in order to evaluate candidate sites for the potential future deployment of additional ground-based interceptors for homeland defense against threats from nations such as North Korea and Iran.

All potential sites analyzed in this Draft EIS contain wetlands that would be affected. All practicable measures were taken to arrange a CIS footprint to minimize and avoid impacts to wetlands while still maintaining operational effectiveness. However there are no practicable deployment alternatives that would completely avoid impacts to wetlands. If a deployment decision were made MDA would coordinate with the U.S. Army Corps of Engineers and applicable state department of environmental protection to determine appropriate mitigations for wetland impacts. As required by Executive Order (EO) 11990 (*Protection of Wetlands*), MDA would prepare a Finding of No Practicable Alternative (FONPA) for the selected site. The FONPA would explain why there is no practicable alternative to impacting wetlands at the identified site. MDA is providing a public review, in accordance with EO 11990, of its findings in the Draft EIS concerning wetlands impacts and potential mitigation measures.

DATES: The public comment period will be from June 3 to July 18, 2016.

ADDRESSES: Comments on the Draft EIS should be received by July 18, 2016 by one of the following methods:

- *Mail:* U.S. Postal Service to: Black & Veatch Special Projects Corp. Attn: MDA CIS EIS, 6800 W 115th Street, Suite 2200, Overland Park, KS–66211–2420.
- *Email: MDA.CIS.EIS@BV.com.*

Public comments on the Draft EIS are requested pursuant to the NEPA. All written comments received during the comment period will become part of the public record. Providing private address information with your comment is voluntary and such personal information will be kept confidential unless release is required by law. All comments received by the public, including at public meetings, will be addressed in the Final EIS. A NOA will be published notifying the public of the final EIS.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Johnson, MDA Public Affairs, at 571–231–8212, or by email: *mda.info@mda.mil.* For more information, including a downloadable copy of the Draft EIS, visit the MDA Web site at *http://www.mda.mil.*

SUPPLEMENTARY INFORMATION:

Proposed Action and Alternative: The Department of Defense (DoD) does not have a proposed action and has not made a decision to deploy or construct an additional interceptor site. Current sites in Alaska and California provide the necessary protection of the homeland from a ballistic missile attack by countries such as North Korea and Iran. If the DoD were to make a decision in the future to construct a new site, the prior completion of the required site studies and EIS could shorten the timeline necessary to build such a site.

If deployed, a CIS would be an extension of the existing Ground-based Midcourse Defense (GMD) element of the Ballistic Missile Defense System. To the extent practicable, the CIS would be built as a contiguous Missile Defense Complex, similar to that found at Fort Greely, Alaska, and would consist of a deployment of up to a total of 60 Ground-Based Interceptors (GBIs) in up to three GBI fields. The GBIs would not be fired from their deployment site except in the Nation's defense and no test firing would be conducted at a CIS. The overall system architecture and baseline requirements for a notional CIS include, but are not limited to, the GBI fields, Command Launch Equipment, In-Flight Interceptor Communication

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[1] 17 CFR 145.9.

System Data Terminals, GMD Communication Network, supporting facilities, such as lodging and dining, recreation, warehouse and bulk storage, vehicle storage and maintenance, fire station, hazardous materials/waste storage, and roads and parking where necessary.

Candidate site locations under consideration include: Fort Custer Training Center in Michigan; Camp Ravenna Joint Military Training Center in Ohio; and Fort Drum in New York. Earlier this year, MDA designated the Center for Security Forces Detachment Kittery Survival, Evasion, Resistance and Escape Facility (SERE East) in Redington Township, Maine as an Alternative Considered, but Not Carried Forward. The Draft EIS also analyzed a No Action Alternative or no CIS deployment. The DoD has not made a decision to deploy or construct a CIS and does not have a preferred alternative.

For each of the candidate site locations, the following resource areas were assessed: air quality, air space, biological, cultural, environmental justice, geology and soils, hazardous materials and hazardous waste management, health and safety, land use, noise, socioeconomics, transportation, utilities, water, wetlands, and visual and aesthetics.

Information: The MDA will host open house public meetings at each of the candidate site locations to review the Draft EIS. Similar to the scoping meetings held in August 2014, the open house event will allow attendees to talk with experts at a series of information stations. Attendees can learn about findings in the Draft EIS and may provide verbal and written comments.

The open house events and dates are as follows: (1) June 21, 2016 from 5:00 p.m. to 8:00 p.m.; Lakeview Middle School, 300 S. 28th St., Battle Creek, Michigan; (2) June 23, 2016 from 5:00 p.m. to 8:00 p.m.; Richland Community Center, 9400 E. Cd Ave., Richland, Michigan; (3) June 28, 2016 from 5:00 p.m. to 8:00 p.m.; Carthage Senior High School, 36500 New York 26, Carthage, New York; (4) June 30, 2016 from 5:00 p.m. to 8:00 p.m.; Ravenna High School, 6589 N. Chestnut Street, Ravenna, Ohio.

Dated: May 24, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–12681 Filed 5–27–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0065]

Proposed Collection; Comment Request

AGENCY: Department of Defense Education Activity, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of Defense Education Activity announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 1, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Aniko Maher, MED, BSN, RN, NCSN, Instructional System Specialist, Nursing, Department of Defense Education Activity, 4800 Mark Center Drive, Alexandria Virginia, 22350–1400, *aniko.maher@hq.dodea.edu,* or call at (571) 372–6001.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: School Health Services Guide, DoDEA Forms, H–1–1, H–1–2, H–2–1, H–2–2, H–2–2a, H–3–2, H–3–6, H–3–7, H–3–9, H–4–8, H–4–9, H–4–9–1, H–6–3, H–6–5, H–8–2, H–8–3, H–8–4, H–9–3, H–9–6, H–10–3, H–10–6, H12–3, H–13–1; 0704–XXXX.

Needs and Uses: The information collection requirement is necessary to obtain and record student health information, required immunizations, existing medical conditions, limitations, treatments that may require nursing care and intervention at school, for school age children attending DoDEA schools.

Affected Public: Individuals or households, not-for-profit institutions.

Annual Burden Hours: 29,200.

Number of Respondents: 292,000.

Responses per Respondent: 1.

Annual Responses: 292,000.

Average Burden per Response: 6 minutes.

Frequency: On occasion.

Respondents are sponsors/parents/guardians for military dependent school aged children attending DoDEA schools, and medical professionals who provide medical care for those children. Forms collect health history, immunization history, medical care plans, and physical clearance on students for safe health care management during school hours and activities. If the form is not collected, unsafe conditions may develop impacting the welfare of individual students, the school community and the community at large. The 23 forms are batched based on the purpose of the forms being collection of health status and medical related information to be processed by the school nurse or other authorized personnel in DoDEA schools.

Dated: May 25, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–12717 Filed 5–27–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Uniform Formulary Beneficiary Advisory Panel; Notice of Federal Advisory Committee Meeting

AGENCY: Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense is publishing this notice to announce a Federal Advisory Committee meeting of the Uniform Formulary Beneficiary Advisory Panel (hereafter referred to as the Panel).

DATES: Wednesday, June 22, 2016, from 9 a.m. to 12 p.m.

ADDRESSES: Naval Heritage Center Theater, 701 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: CAPT Edward Norton, Designated Federal Officer (DFO), Uniform Formulary Beneficiary Advisory Panel, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101. Telephone: (703) 681–2890. Fax: (703) 681–1940. Email Address: *dha.ncr.health-it.mbx.baprequests@mail.mil.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (Title 5, United States Code (U.S.C.), Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended).

Purpose of Meeting: The Panel will review and comment on recommendations made to the Director of Defense Health Agency, by the Pharmacy and Therapeutics Committee, regarding the Uniform Formulary.

Meeting Agenda

1. Sign-In
2. Welcome and Opening Remarks
3. Public Citizen Comments
4. Scheduled Therapeutic Class Reviews (Comments will follow each agenda item)
   a. Oral Contraceptives—Emergency Contraceptives
   b. Anticonvulsants Agents
   c. Antipsychotic Agents—Atypical
5. Designated Newly Approved Drugs in Already-Reviewed Classes
6. Designated Newly FDA Approved Drugs
7. Pertinent Utilization Management Issues
8. Panel Discussions and Vote

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 Code of Federal Regulations (CFR) 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and will be provided only to the first 220 people signing-in. All persons must sign-in legibly.

Administrative Work Meeting: Prior to the public meeting, the Panel will conduct an Administrative Work Meeting from 8:30 a.m. to 9:00 a.m. to discuss administrative matters of the Panel. The Administrative Work Meeting will be held at the Naval Heritage Center, 701 Pennsylvania Avenue NW., Washington, DC 20004. Pursuant to 41 CFR 102–3.160, the Administrative Work Meeting will be closed to the public.

Written Statements: Pursuant to 41 CFR 102–3.140, the public or interested organizations may submit written statements to the membership of the Panel at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Panel's DFO. The DFO's contact information can be obtained from the General Services Administration's Federal Advisory Committee Act Database at *http://facadatabase.gov/.*

Written statements that do not pertain to the scheduled meeting of the Panel may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than 5 business days prior to the meeting in question. The DFO will review all submitted written statements and provide copies to all the committee members.

Public Comments: In addition to written statements, the Panel will set aside 1 hour for individuals or interested groups to address the Panel. To ensure consideration of their comments, individuals and interested groups should submit written statements as outlined in this notice; but if they still want to address the Panel, then they will be afforded the opportunity to register to address the Panel. The Panel's DFO will have a "Sign-Up Roster" available at the Panel meeting for registration on a first-come, first-serve basis. Those wishing to address the Panel will be given no more than 5 minutes to present their comments, and at the end of the 1-hour time period, no further public comments will be accepted. Anyone who signs-up to address the Panel, but is unable to do so due to the time limitation, may submit their comments in writing; however, they must understand that their written comments may not be reviewed prior to the Panel's deliberation.

To ensure timeliness of comments for the official record, the Panel encourages that individuals and interested groups consider submitting written statements instead of addressing the Panel.

Dated: May 25, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–12713 Filed 5–27–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Teacher Incentive Fund

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information

Teacher Incentive Fund (TIF).

Notice inviting applications for new awards for fiscal year (FY) 2016.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.374A.

DATES: *Applications Available:* May 31, 2016.

Deadline for Notice of Intent To Apply: June 30, 2016.

Dates of Pre-Application Workshops: For information about pre-application workshops, visit the TIF Web site at: *http://innovation.ed.gov/what-we-do/teacher-quality/teacher-incentive-fund/.*

Deadline for Transmittal of Applications: July 15, 2016.

Deadline for Intergovernmental Review: September 28, 2016.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the TIF program is to support, develop, and implement sustainable Performance-based Compensation Systems for teachers, principals, and other personnel in High-Need Schools,[1] within the context of a local educational agency's (LEA's) overall Human Capital Management System, in order to increase Educator effectiveness and student achievement in those schools.

Background: The TIF program is based on the premise, supported by 20 years of research, that effective teachers are the most critical in-school factor in improving student outcomes. Recent research suggests that principals and principal quality are also key, but often overlooked, in-school factors for improving student outcomes. Given the importance of ensuring that Educators are as effective as possible—especially for high-need students—the TIF program uses performance-based compensation and related supports for Educators to catalyze improvements in a district's human capital management and in student outcomes.

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[1] Throughout this notice, all defined terms are denoted with initial capitals.

The Department designed each of the previous three TIF competitions in FYs 2006, 2010, and 2012 to build on earlier efforts as the Department, States, districts, and schools learned more about how to support Educators in their efforts to help students learn. Through the most recent TIF competition (in FY 2012), the Department funded projects that encompassed broader human capital management systems that supported sustainable performance-based compensation. This is in contrast to earlier TIF competitions, which focused almost exclusively on the provision of annual one-time bonuses. The FY 2012 competition also focused on projects under which grantees deployed a variety of human capital management strategies throughout an Educator's career trajectory (*e.g.,* from pre-service through retention) to help support and sustain the grantees' performance-based compensation systems.

For example, several grantees in the FY 2012 cohort changed their district-wide compensation systems to: (1) Allow Educators who demonstrate effectiveness to earn significantly higher pay or to significantly accelerate the timeline for increased compensation, particularly for those Educators in High-Need Schools and subjects; (2) provide incentives and supports to increase the number of effective Educators who are recruited and retained in High-Need Schools; (3) develop and implement career ladders to give Educators opportunities for leadership and advancement inside and outside the classroom; and (4) implement a salary system where increases are based in part on effectiveness. This expanded strategy of incentivizing effective Educators through performance-based compensation aligns with the purpose and goals of the TIF program.

There is no single set of best practices that districts should use to demonstrate their readiness to implement innovative human capital management strategies, including performance-based compensation. We know, however, that when TIF grantees have a set of human capital policies and practices in place at the outset of the grant period that support and align with their performance-based compensation strategies, these grantees face fewer challenges in implementing transformation efforts than those without such a foundation in place. The experience of these grantees demonstrates that building the systems and tools designed to evaluate, support, and manage Educators in ways that support and sustain their performance-based compensation requires districts to make significant infrastructure and capacity commitments, including: a district-wide, Educator evaluation and support system that includes multiple measures, including gains in student achievement, and meaningfully differentiates performance levels of Educators; data systems that collect and report on the elements of an Educator evaluation and support system in clear and coherent ways; a range of mechanisms to identify specific areas for Educator development and support, and for providing that support; and practices that enable administrators, school leaders, and Educators to communicate and influence the implementation of these systems. Efforts to create these kinds of systems and tools are more likely to drive enduring, sustainable improvements in Educator practice and student learning if they are aligned with the current district work to improve student outcomes and produce valid, reliable, and trusted information. A robust Educator evaluation system—one that uses, among other things, gains in student academic achievement and multiple annual observations—is not only statutorily required for TIF grantees, but is also critical to the readiness of a district to take on this work.

Additionally, TIF grantees are more successful when they collaborate with key stakeholders in designing, implementing, and continuously improving their projects. A district's Performance-based Compensation System, developed with the input of teachers and school leaders in the schools to be served by the grant, prepares districts to immediately take on this work by regularly seeking the feedback of Educators on initiatives and programs that impact schools. Districts that have systems in place for seeking this feedback demonstrate an understanding of the critical role Educator voice plays in successful human capital transformation. Common effective practices include initial design teams that bring together teachers and principals; task forces to tackle specific issues, such as selecting a rubric for use in evaluations; and focus groups that provide feedback on proposed career ladder systems or new compensation models. This ongoing engagement is critical to obtaining Educator buy-in to, and the success of, high-quality evaluation and support systems that are critical to a viable, meaningful Performance-based Compensation System.

District-level human capital strategies have shifted significantly since the FY 2012 competition. In recent years, many State educational agencies (SEAs) and LEAs have developed high-quality educator evaluation and support systems as part of comprehensive reform strategies implemented consistent with competitive federal awards and flexibility offered by the Department under the Elementary and Secondary Education Act of 1965, as amended (ESEA). States and Districts have used these systems as part of their efforts to improve districts' hiring practices, provide Educators with meaningful feedback and targeted professional development, and use Educator performance information to inform key school- and district-level decisions, such as teacher placement or leadership opportunities. Consequently, an increasing number of districts are prepared to make more informed human capital decisions that both support Educators and improve student outcomes. While section 4(c) of the Every Student Succeeds Act (ESSA) (Pub. L. 114–95, December 10, 2015) ends waivers under ESEA flexibility as of August 1, 2016, section 2101(c)(4)(B)(ii) of the ESEA, as amended by ESSA, provides States and districts with explicit authority to "support the design and implementation of teacher, principal, or other school leader evaluation and support systems." This will allow States and districts to continue to improve the systems they have established.

While SEAs and LEAs have made substantial progress, additional work is needed to ensure that these Educator evaluation and support systems are robust, relevant, reliably producing trusted information, and seamlessly integrated into school- and district-level human capital processes. In some cases, this may mean expanding or improving existing approaches within a current educator evaluation and support system, by, for example, providing more mentoring and coaching opportunities for Educators. In other cases, districts may be well-positioned to take on new challenges or opportunities that affect Educator effectiveness, such as partnering with institutions of higher education to strengthen pre-service programming.

Finally, SEAs are now engaged in renewed efforts to ensure that high-need students have equitable access to the most effective Educators. Research indicates that students' race and family income often predict their access to excellent educators. Low-income students and high-need schools tend to have teachers who are less experienced, have fewer credentials and do not demonstrate a track record of success.[2] For example, while we know there are many excellent first-year teachers, based on 2011–12 data from the Department's Civil Rights Data Collection, African American and American Indian students are four times as likely as white students to be enrolled in a school with more than twenty percent of first-year teachers, and Latino students are three times as likely.[3] The Department helped spur States' efforts to increase equitable access to excellent Educators through its Excellent Educators for All Initiative, launched in July 2014, under which the Department required each SEA to submit a plan describing the steps it will take to ensure that "poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers," as required by section 1111(b)(8)(C) of the ESEA, as amended by the No Child Left Behind Act of 2001. To date, all fifty states, the District of Columbia and Puerto Rico have approved plans to advance educator equity consistent with the requirements in the law. SEAs must continue to engage in educator equity efforts under section 1111(g)(1)(B) of the ESEA, as amended by the ESSA.

Most SEAs started to implement approved plans in the 2015–16 school year; these plans can be found at *www2.ed.gov/programs/titleiparta/resources.html.* Based on Department review of these plans, and consistent with requirements that will take effect when ESSA is implemented, the Department believes TIF can support SEAs and LEAs in implementing strategies aimed at improving equitable access to effective Educators.

Priorities: This notice contains one absolute priority, two competitive preference priorities, and one invitational priority. The absolute priority aligns with the language of the 2016 Appropriations Act that authorizes funding for this competition, the notice of final priorities, requirements, definitions, and selection criteria for this program (TIF NFP), published in the **Federal Register** on June 14, 2012 (77 FR 35757), and basic provisions of ESSA's Teacher and School Leader Incentive Fund Grants Program (ESSA sections 2211 and 2212), which we adopt under the authority for an orderly transition to this Act contained in section 4(b) of the ESSA. The competitive preference priorities are from the Secretary's final supplemental priorities and definitions for discretionary grant programs (Supplemental Priorities) published in the **Federal Register** on December 10, 2014 (79 FR 73425) and basic provisions of ESSA's Teacher and Leader Incentive Fund Grants Program (ESSA sections 2211 and 2212), which we adopt under the authority for an orderly transition to this Act contained in section 4(b) of the ESSA.

Absolute Priority: For FY 2016, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

The priority is:

An LEA-Wide Human Capital Management System (HCMS) With Educator Evaluation and Support Systems at the Center

To meet this priority, the applicant must include, in its application, a description of its LEA-wide HCMS, as it exists currently and with any modifications proposed for implementation during the project period of the grant. The application must describe—

(1) How the HCMS is or will be aligned with the LEA's vision of instructional improvement;

(2) How the LEA uses or will use the information generated by the Evaluation and Support System it describes in its application to inform key human capital decisions, such as decisions on recruitment, hiring, placement, retention, dismissal, compensation, professional development, tenure, and promotion;

(3) The human capital strategies the LEA uses or will use to ensure that High-Need Schools are able to attract and retain effective Educators; and

(4) Whether or not modifications are needed to an existing HCMS to ensure that it includes the features described in response to paragraphs (1), (2), and (3) of this priority, and a timeline for implementing the described features, provided that the use of evaluation information to inform the design and delivery of professional development and the award of performance-based compensation under the applicant's proposed Performance-based Compensation Systems in High-Need Schools begins no later than the third year of the grant's project period in the High-Need Schools listed in response to paragraph (a) of *Requirement 2—Documentation of High-Need Schools.*

Note: TIF funds can be used to support the costs of the systems and strategies described under this priority.

Competitive Preference Priorities: For FY 2016, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2) we award an additional two points to an application that meets Competitive Preference Priority 1, and we award up to an additional five points to an application, depending on how well the application meets Competitive Preference Priority 2.

The priorities are:

Competitive Preference Priority 1—Supporting High-Need Students (0 or 2 points). Projects that are designed to improve academic outcomes for students served by Rural Local Educational Agencies.

Competitive Priority 2—Improving Teacher Effectiveness and Promoting Equitable Access to Effective Educators (up to 5 points). Projects that are designed to promote equitable access to effective teachers for students from low-income families and minority students across and within schools and districts.

For the purposes of this priority, teacher effectiveness must be measured using an Evaluation and Support System.

Within this competitive preference priority, we are particularly interested in applications that address the following invitational priority. Whether an LEA's TIF application addresses the competitive preference priority based on strategies they are already implementing or strategies they propose to implement, this invitational priority encourages LEAs to align their own strategies with the State Equity Plan.

Invitational Priority: Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Invitational Priority—Promoting Equitable Access Through State Plans To Ensure Equitable Access to Excellent

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[2] See, *e.g.*, Isenberg, Eric, et al. "Access to Effective Teaching for Disadvantaged Students. NCEE 2014–4001." *Institute of Education Sciences* (2013): *http://ies.ed.gov/ncee/pubs/20144001/pdf/20144001.pdf.*

Sass, Tim, Jane Hannaway, Zeyu Xu, David Figlio, and Li Feng. "Value Added of Teachers in High-Poverty Schools and Lower-Poverty Schools." Journal of Urban Economics, vol. 72, 2012, pp.104–122: *http://www.sciencedirect.com/science/article/pii/S0094119012000216.*

Tennessee Department of Education. "Tennessee's Most Effective Teachers: Are They Assigned to the Schools That Need Them Most?" Nashville, TN: Tennessee Department of Education, 2007: *http://www.gtlcenter.org/webcasts/addressingInequities/Tennessee_McCargar.pdf.*

[3] U.S. Department of Education Office for Civil Rights, Civil Rights Data Collection: Data Snapshot (Teacher Equity) (March 21, 2014 (revised July 3, 2014)): *http://ocrdata.ed.gov/Downloads/CRDC-Teacher-Equity-Snapshot.pdf.*

Educators: Applications that include a description of how the applicant's project promotes equitable access to effective Educators for students from low-income families and for minority students across and within districts, consistent with approved State Plans to Ensure Equitable Access to Excellent Educators.

Requirements: The following requirements are from the TIF 2012 NFP and the 2016 Appropriations Act.

Requirement 1—Implementation of Performance-based Compensation Systems: Each applicant must describe a plan to develop and implement Performance-based Compensation Systems for teachers, principals, and other personnel in High-Need Schools in LEAs, including charter schools that are LEAs.

Applications must: address how applicants will implement Performance-based Compensation Systems as defined in this notice. Applicants also must demonstrate that such Performance-based Compensation Systems are developed with the input of teachers and school leaders in the schools and LEAs to be served by the grant.

Requirement 2—Documentation of High-Need Schools: Each applicant must demonstrate, in its application, that the schools participating in the implementation of the TIF-funded Performance-based Compensation Systems are High-Need Schools (as defined in this notice), including High-Poverty Schools, Priority Schools, or Persistently Lowest-Achieving Schools. Each applicant must provide, in its application—

(a) A list of High-Need Schools in which the proposed TIF-supported Performance-based Compensation Systems would be implemented; and

(b) For each High-Poverty School listed, the most current data on the percentage of students who are eligible for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act or are considered students from low-income families based on another poverty measure that the LEA uses (see section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5))). Data provided to demonstrate eligibility as a High-Poverty School must be school-level data; the Department will not accept LEA- or State-level data for purposes of documenting whether a school is a High-Poverty School; and

(c) For any Priority Schools listed, documentation verifying that the State has received approval of a request for ESEA flexibility, and that the schools have been identified by the State as priority schools.

Definitions: The following definitions are from the TIF NFP, the Supplemental Priorities, the ESEA, as amended by the ESSA, and 34 CFR 77.1. The source of each definition is noted in parentheses following the text of the definition.

Educators means teachers and principals. (TIF NFP)

Evaluation and Support System means a system that is fair, rigorous, valid, reliable, and objective and reflects clear and fair measures of teacher, principal, or other school leader performance, based in part on demonstrated improvement in student academic achievement; and provides teachers, principals, or other school leaders with ongoing, differentiated, targeted, and personalized support and feedback for improvement, including professional development opportunities designed to increase effectiveness. (ESSA § 2212(c)(4) and (e)(2))

High-need school means:

(a) A high-poverty school, or

(b) A persistently lowest-achieving school, or

(c) In the case of States that have received the Department's approval of a request for ESEA flexibility, a priority school. (TIF NFP)

High-poverty school means a school with 50 percent or more of its enrollment from low-income families, based on eligibility for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that LEAs use (see section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5)). For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-poverty school under this definition is determined on the basis of the most currently available data. (TIF NFP)

Human capital management system (HCMS) means a system by which an LEA makes and implements human capital decisions, such as decisions on recruitment, hiring, placement, retention, dismissal, compensation, professional development, tenure, and promotion. (TIF NFP)

Logic model (also referred to as a theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (*i.e.*, the active "ingredients" that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key *components* and outcomes, theoretically and operationally. (34 CFR 77.1)

Performance-based Compensation System means a system of compensation for teachers, principals, and other school leaders—

(A) That differentiates levels of compensation based in part on measurable increases in student academic achievement; and

(B) Which may include—

(i) Differentiated levels of compensation, which may include bonus pay, on the basis of the employment responsibilities and success of effective teachers, principals, and other school leaders in hard-to-staff schools or high-need subject areas; and

(ii) Recognition of the skills and knowledge of teachers, principals, and other school leaders as demonstrated through—

(I) Successful fulfillment of additional responsibilities or job functions, such as teacher leadership roles; and

(II) Evidence of professional achievement and mastery of content knowledge and superior teaching and leadership skills. (ESSA § 2211(b)(4))

Persistently lowest-achieving school means, as determined by the State:

(i) Any Title I school in improvement, corrective action, or restructuring that—

(a) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or

(b) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and

(ii) Any secondary school that is eligible for, but does not receive, Title I funds that—

(a) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or

(b) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

To identify the persistently lowest achieving schools, a State must take into account both:

(i) The academic achievement of the "all students" group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and

(ii) The school's lack of progress on those assessments over a number of years in the "all students" group. (TIF NFP)

NOTE: For purposes of this definition, the Department considers schools that are identified as Tier I or Tier II schools under the School Improvement Grants program (see 75 FR 61363) as lowest performing schools.

Priority school means a school that has been identified by the State as a priority school pursuant to the State's approved request for ESEA flexibility. (TIF NFP)

Relevant outcome means the student outcome(s) (or the ultimate outcome if not related to students) the proposed process, product, strategy, or practice is designed to improve; consistent with the specific goals of a program. (34 CFR 77.1)

Rural local educational agency means an LEA that is eligible under the Small Rural School Achievement program or the Rural and Low-Income School program authorized under Title VI, Part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web site at *www2.ed.gov/nclb/freedom/local/reap.html.* (Supplemental Priorities)

Strong theory means a rationale for the proposed process, product, strategy, or practice that includes a logic model. (34 CFR 77.1)

Program Authority: Public Law 114–113, 2016 Appropriations Act; the ESEA, as amended by the ESSA.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The TIF NFP. (e) The Supplemental Priorities.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $50,000,000–$70,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2017 from the list of unfunded applications from this competition.

Estimated Range of Awards: $500,000–$12,000,000 for the first year of the project period.

Note: The Department estimates a wide range of awards given the potentially large differences in the scope of funded projects, including the size and number of participating LEAs.

Estimated Average Size of Awards: $10,000,000 for the first year of the project period. Funding for the second through fifth years of the project period is subject to the availability of funds and the approval of continuation awards (see 34 CFR 75.253).

Estimated Number of Awards: 5–10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:*

(a) LEAs, including charter schools that are LEAs.

(b) States that apply with one or more LEAs.

(c) Nonprofit organizations that apply in partnership with one or more LEAs or an LEA and State.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. Address to Request Application Package

Vicki Robinson, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W103, Washington, DC 20202–6200. Telephone: (202) 205–5471 or by email: *TIF5@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. Content and Form of Application Submission

Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: We will be able to develop a more efficient process for reviewing grant applications if we can anticipate the number of applicants that intend to apply for funding under this competition. Therefore, we strongly encourage each potential applicant to notify us of the applicant's intent to submit an application for funding by sending a short email message. This short email should provide (1) the applicant organization's name and address; and (2) all priorities the applicant intends to address. Please send this email notification to *TIF5@ed.gov* with "Intent to Apply" in the email subject line. Applicants that do not provide this email notification may still apply for funding and are not required to, or prohibited from, addressing priorities they do not mention in their notice of intent to apply.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Please limit the application narrative to no more than 40 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The suggested page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the suggested page limit does apply to all of the application narrative.

b. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the TIF program, an application may include business information that the applicant considers proprietary. The Department's regulations define "business information" in 34 CFR 5.11.

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under "Other Attachments Form," please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. Submission Dates and Times

Applications Available: May 31, 2016.

Deadline for Notice of Intent to Apply: June 30, 2016.

Deadline for Transmittal of Applications: July 15, 2016.

Pre-application workshops will be held for this competition in the spring of 2016. The workshops are intended to provide technical assistance to all interested grant applicants. Detailed information regarding the pre-application workshops times, and online registration form, can be found on the Teacher Incentive Fund's Web site at *http://innovation.ed.gov/what-we-do/teacher-quality/teacher-incentive-fund/.*

Applications for grants under this program must be submitted electronically using the *Grants.gov* Apply site *(Grants.gov).* For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 28, 2016.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a *SAM.gov* Tip Sheet, which you can find at: *www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via *Grants.gov,* you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: *www.grants.gov/web/grants/register.html.*

7. Other Submission Requirements

Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Teacher Incentive Fund, CFDA number 84.374A, must be submitted electronically using the Governmentwide *Grants.gov* Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Teacher Incentive Fund competition at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.374, not 84.374A).

Please note the following:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline

requirements. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov*.
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this program to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov*. In addition, for specific guidance and procedures for submitting an application through *Grants.gov*, please refer to the *Grants.gov* Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html*.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the project narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by *Grants.gov*, the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by *Grants.gov*, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the *Grants.gov* system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the *Grants.gov* system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail your statement to: Vicki Robinson, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W103, Washington, DC 20202–6200.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.374A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.374A), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210, the TIF NFP, and the 2016 Appropriations Act.

The maximum score for all the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses. The selection criteria for this competition are as follows:

(a) Significance (20 points) (34 CFR 75.210)

The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(b) Quality of the Project Design (45 Points) (34 CFR 75.210)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(2) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(3) The extent to which the proposed project is supported by a strong theory.

(4) The extent to which the proposed project will integrate with or build on similar or related efforts to improve relevant outcomes (as defined in 34 CFR 77.1(c)), using existing funding streams from other programs or policies supported by community, State, and Federal resources.

(c) Professional Development Systems to Support the Needs of Teachers and Principals Identified Through the Evaluation Process (15 Points) (TIF NFP)

The Secretary considers the extent to which each participating LEA has a high-quality plan for professional development to help all Educators located in High-Need Schools, listed in response to Requirement 2(a), to improve their effectiveness. In determining the quality of each plan for professional development, the Secretary considers the extent to which the plan describes how the participating LEA will use the disaggregated information generated by the proposed educator Evaluation and Support System to identify the professional development needs of individual Educators and schools.

(d) Quality of the Management Plan (15 Points) (34 CFR 75.210)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(e) Adequacy of Resources (5 Points) (2016 Appropriations Act; 34 CFR 75.210)

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The extent to which the applicant demonstrates that Performance-based Compensation Systems are developed with the input of teachers and school leaders in the schools and local educational agencies to be served by the grant.

(2) The extent to which the applicant demonstrates a plan to sustain financially the activities conducted and systems developed under the grant once the grant period has expired.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of

funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Measures:* Pursuant to the Government Performance and Results Act of 1993, the Department has established the following performance measures that it will use to evaluate the overall effectiveness of the grantee's project, as well as the TIF program as a whole:

(a) The percentage of educators in all schools who earned performance-based compensation.

(b) The percentage of educators in all High-Need Schools who earned performance-based compensation.

(c) The gap between the retention rate of educators receiving performance-based compensation and the average retention rate in each high-need school.

(d) The number of school districts participating in a TIF grant that use educator evaluation systems to inform the following human capital decisions: Recruitment; hiring; placement; retention; dismissal; professional development; tenure; promotion; or all of the above.

(e) The percentage of performance-based compensation paid to educators with State, local, or other non-TIF Federal resources.

(f) The percentage of teachers and principals who receive the highest effectiveness rating.

(g) The percentage of teachers and principals in high-needs schools who receive the highest effectiveness rating.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Vicki Robinson, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W103, Washington, DC 20202–6200. Telephone: (202) 205–5471 or by email: *TIF5@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 25, 2016.

Nadya Chinoy Dabby,

Assistant Deputy Secretary for Office of Innovation and Improvement.

[FR Doc. 2016–12733 Filed 5–27–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; American History and Civics Academies Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information

American History and Civics Academies Program.

Notice inviting applications for new awards for fiscal year (FY) 2016.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.422A.

DATES:

Applications Available: May 31, 2016.

Deadline for Notice of Intent to Apply: June 30, 2016.

Deadline for Transmittal of Applications: July 15, 2016.

Date of Pre-Application Webinar: June 9, 2016.

Deadline for Intergovernmental Review: September 13, 2016.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The American History and Civics Academies Program (Academies Program) supports the establishment of: (1) Presidential Academies for the Teaching of American History and Civics that offer workshops for both veteran and new teachers to strengthen their knowledge of American history and civics (Presidential Academies); and (2) Congressional Academies for Students of American History and Civics that provide high school students with opportunities to develop a broader and deeper understanding of these subjects (Congressional Academies).

Background

On December 10, 2015, the President signed into law the Every Student Succeeds Act (ESSA), Public Law 114–95, which reauthorized the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB). Among other things, the ESSA amends part B of title II of the ESEA to include a reauthorized Academies program, which was previously authorized under the American History and Civics Education Act of 2004. Under section 5(c) of the ESSA, however, the amendments made by the ESSA to the ESEA with respect to competitive grant programs (including the Academies program) take effect beginning with FY 2017 appropriations. Accordingly, the Department will use the FY 2016 funds available for this competition to make Academies grants in accordance with the requirements of the American History and Civics Education Act of 2004, and not those of the ESEA, as amended by the ESSA. In addition, we intend to use FY 2016 funds to support the entire project period of awards made under this competition and expect that, consistent with section 5(c) of the ESSA, any funding provided by Congress in FY 2017 and future years for the Academies program would be for the new program as authorized by the ESEA, as amended by the ESSA.

Students who have an understanding of and engagement with American history and civics are more likely to be civically engaged and active participants in their community.[1] Moreover, students' understanding of American history and civics will likely be enhanced if their learning experiences are interesting, engaging, and relevant to students' perspectives and communities. It is therefore important to ensure that teachers have a thorough understanding of American history and civics and are well-equipped to implement effective teaching strategies that help their students master the necessary content knowledge and skills. Students who are engaged in learning in these content areas will be better equipped to be active members of their community and the world at large, and to participate fully in all forms of civic engagement.[2]

Recent studies indicate a critical need to improve teaching and learning in American history and civics. For example, only 18 percent of eighth-graders performed at or above the proficient level on the National Assessment of Educational Progress (NAEP) assessment in U.S. history, and only 23 percent performed at or above the proficient level on the NAEP assessment in civics.[3]

The Academies Program supports projects to raise student achievement in American history and civics by improving teachers' and students' knowledge, understanding, and engagement with these subjects through intensive workshops with scholars, master teachers, and curriculum experts. Project activities should reflect the best available research and practice in teaching and learning. Presidential Academies will strive to enable teachers to develop further expertise in the content areas of American history and civics, teaching strategies, use of technologies, and other essential elements of teaching to rigorous college- and career-ready standards. Congressional Academies are intended to broaden and deepen students' interest in and understanding of American history and civics through the use of content-rich, engaging learning resources and strategies.

Offering a wide array of perspectives in teaching and learning American history and civics is essential to acknowledging students' rich and diverse perspectives and experiences, and to stimulating their long-term interest in these subjects. Accordingly, projects funded under this grant program might consider incorporating diverse historical perspectives and relying on an array of resources (*e.g.,* historical documents, oral histories, and artifacts) that convey the full range of American experiences.

Through a competitive preference priority, we encourage applicants to consider projects that will focus on serving high-need students and students from underserved populations to help ensure that these students have access to high-quality, interactive instruction that will help them become college- and career-ready and be better prepared to participate fully in civic activities. In addition, applicants may want to consider projects that are designed to recruit teachers and students from the same schools and school districts in order to promote a seamless delivery of training and instruction into a target district and maximize project benefits.

Grantees will be expected to measure the impact of their projects on teacher development and student learning. Early findings from grantee evaluations are expected to help guide the grantee's subsequent teacher professional development and student learning efforts over the three-year project period.

Priorities: This notice contains two absolute priorities and one competitive preference priority. Both absolute priorities are from the American Civics and History Education Act of 2004, Public Law 108–474. The competitive priority is from the Secretary's final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on

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[1] American Academy of Arts and Sciences, The Heart of the Matter: The Humanities and Social Sciences for a Vibrant, Competitive, and Secure Nation (2013) via *www.humanitiescommission.org/_pdf/hss_report.pdf.*

[2] Campaign for the Civic Mission of Schools, "Guardian of Democracy: The Civic Mission of Schools," (2011), via *http://civicmission.s3.amazonaws.com/118/f0/5/171/1/Guardian-of-Democracy-report.pdf.*

[3] U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress (NAEP), The Nation's Report Card: 2014 U.S. History, Geography, and Civics at Grade 8 (NCES 2015112) via *www.nationsreportcard.gov/hgc_2014/*

December 10, 2014 at 79 FR 73425 (Supplemental Priorities).

Absolute Priorities: For FY 2016 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet both of the following priorities:

Absolute Priority 1—Presidential Academies for the Teaching of American History and Civics

Under this priority, an applicant must propose to establish a Presidential Academy for Teaching of American History and Civics that may offer workshops for both veteran and new teachers of American history and civics.

Absolute Priority 2—Congressional Academies for Students of American History and Civics

Under this priority, an applicant must propose to establish a Congressional Academy for Students of American History and Civics.

Competitive Preference Priority: For FY 2016 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(ii) we award up to an additional 10 points to an application depending on how well the application meets this priority. If an applicant wishes to be considered for these competitive preference points, it must clearly identify where in the project narrative section of its application it addresses this priority.

This priority is:

Competitive Preference Priority—Supporting High-Need Students (Up to 10 Points)

Projects that are designed to improve academic outcomes for high-need students (as defined in this notice).

Definitions

The following definitions are from the Supplemental Priorities and apply to this competition:

High-minority school means a school as that term is defined by a local educational agency (LEA), which must define the term in a manner consistent with its State's Teacher Equity Plan, as required by section 1111(b)(8)(C) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The applicant must provide the definition(s) of "high-minority schools" used in its application.

High-need students means students who are at risk of educational failure or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools, who are far below grade level, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are English learners.

Regular high school diploma means the standard high school diploma that is awarded to students in the State and that is fully aligned with the State's academic content standards or a higher diploma and does not include a General Education Development (GED) credential, certificate of attendance, or any alternative award.

Authority: American History and Civics Education Act of 2004, Pub. Law 108–474.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,785,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2017 from the list of unfunded applicants from this competition.

Estimated Average Size of Awards: $600,000 per year.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months. The Department intends to fund the entire project period of a grant with FY 2016 funds.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants include:

- Local educational agencies;
- Institutions of higher education; and
- Other public and private agencies, organizations, and institutions, including cultural institutions and museums.

To be eligible to receive an award, an applicant must include in its application evidence of its expertise in historical methodology or the teaching of history.

Note: If more than one eligible entity wishes to form a consortium and jointly submit a single application, they must follow the procedures for group applications described in 34 CFR 75.127 through 34 CFR 75.129.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Christine Miller, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W205, Washington, DC 20202–5970. Telephone: (202) 453–6740 or by email: *Christine.Miller@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: June 30, 2016.

The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by sending a short email message indicating the applicant's intent to submit an application for funding. The email need not include information regarding the content of the proposed application, only the applicant's intent to submit it. The Department requests that this email notification be sent to the Academies Program inbox at: *Academies@ed.gov.* Applicants that fail to provide this email notification may still apply for funding.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit the application narrative to no more than 50 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- *Use one of the following fonts:* Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

b. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Academies Program, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define "business information" and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C 552, as amended).

Because we plan to post the project narrative section of funded Academies Program applications on our Web site, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under "Other Attachments Form," please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*

Applications Available: May 31, 2016.

Deadline for Notice of Intent to Apply: June 30, 2016.

Date of Pre-Application Webinar: June 9, 2016.

Deadline for Transmittal of Applications: July 15, 2016.

Applications for grants under this program must be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 13, 2016.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We specify unallowable costs in 2 CFR 200, subpart E. We reference regulations outlining funding restrictions in the Applicable Regulations section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov*.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a *SAM.gov* Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via *Grants.gov*, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: *www.grants.gov/web/grants/register.html.*

7. Other Submission Requirements:

Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Academies Program, CFDA 84.422, must be submitted electronically using the Government wide *Grants.gov* Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Academies Program at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.422, not 84.422A).

Please note the following:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov,* we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov.*
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this program to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through *Grants.gov,* please refer to the *Grants.gov* Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the project narrative—is critical to a meaningful review of your proposal. For that reason, it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by *Grants.gov,* the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by *Grants.gov,* it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov,* please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the *Grants.gov* system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the *Grants.gov* system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Christine Miller, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W205, Washington, DC 20202–5960. FAX: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.422A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.422A), 550 12th Street SW., Room 7039, Potomac Center Plaza Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210. An applicant may earn up to a total of 100 points based on the selection criteria. The maximum score for addressing each criterion is indicated in parentheses. Each criterion also includes the factors that the reviewers will consider in determining how well an application addresses the criterion.

Selection Criteria

A. *Quality of the Project Design (up to 35 points).* In determining the quality of the design of the proposed project, the Secretary considers the following factors—

(i) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition.

(ii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(iii) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

B. *Significance (20 points).* In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

C. *Quality of the Management Plan (30 points).* In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

D. *Quality of the Project Evaluation (15 points).* In determining the quality of project evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Measures*

The Department has established the following Government Performance and Results Act of 1993 (GPRA) performance objective for the Academies Program:

Participants will demonstrate through pre- and post-assessments an increased understanding of American history and civics that can be directly linked to their participation in the Presidential Academy or Congressional Academy.

We will track performance on this objective through the following indicators:

Presidential Academies: The average percentage gain on an assessment after participation in the Presidential Academy.

Congressional Academies: The average percentage gain on an assessment after participation in the Congressional Academy.

We advise an applicant for a grant under this program to give careful consideration to these indicators in conceptualizing the approach and evaluation of its proposed project. Each grantee will be required to provide, in its annual and final performance reports, data about its performance with respect to the performance objective and these indicators.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Christine Miller, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W205, Washington, DC 20202–5960, telephone (202) 453–6740. Or by email: *Academies@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll-free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 25, 2016.

Nadya Chinoy Dabby,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2016–12738 Filed 5–27–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–70–000]

Cottonwood Wind Project, LLC v. Nebraska Public Power District, Inc; Notice of Complaint

Take notice that on May 20, 2016, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e (2012), and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2015), Cottonwood Wind Project, LLC (Cottonwood or Complainant) filed a formal complaint against Nebraska Public Power District (Respondent) alleging that Respondent made unauthorized expenditures for network upgrade construction under the Cottonwood Generator Interconnection Agreement, as more fully explained in its complaint.

Complainant certifies that copies of the complaint were served on the contacts for Respondent listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 20, 2016.

Dated: May 24, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–12703 Filed 5–27–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3127–023]

Ware River Power, Inc.; Notice of Application Accepted for Filing, Soliciting Comments, Motions to Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Application to amend 5 MW exemption from licensing.

b. *Project No.:* 3127–023.

c. *Date Filed:* January 27, 2016.

d. *Applicant:* Ware River Power, Inc.

e. *Name of Project:* Ware River Project.

f. *Location:* The project is located on the Ware River in Hampshire County, Massachusetts.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Mr. Lucus Wright, Ware River Power, Inc., 48 Allen Drive, P.O. Box 512, Barre, MA 01005 (508) 355–4575.

i. *FERC Contact:* Mr. Mark Pawlowski, (202) 502–6052, or *Mark.Pawlowski@ferc.gov*.

j. Deadline for filing comments, motions to intervene, protests, and recommendations is 15 days from the date of issuance of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–3127–023) on any comments, motions to intervene, protests, or recommendations filed.

k. *Description of Request:* The Ware River Project consists of an Upper and Lower development. The applicant proposes to replace the lower development's single 250-kilowatt (kW) turbine with a 280-kW turbine and install a new 110-kW minimum flow turbine. The lower development's installed capacity would increase by 140 kW and the hydraulic capacity would increase by 94 cubic feet per second. In addition, the applicant proposes replace the lower development's existing 30-foot-wide by 10-foot-deep trashrack structure with a new 50-foot-wide by 10-foot deep trashrack structure. The new trashrack would maintain the current 1.5-inch spacing between the trashrack bars. To facilitate the trashrack replacement the applicant proposes to draw down the 10-acre lower development's impoundment from June 2016 through September 2016.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208- 3676 or email *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading, the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: May 24, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–12704 Filed 5–27–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2355–021]

Exelon Generation Company, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Recreation Plan Amendment.

b. *Project No:* 2355–021.

c. *Date Filed:* May 20, 2016.

d. *Applicant:* Exelon Generation Company, LLC.

e. *Name of Project:* Muddy Run Pumped Storage Project.

f. *Location:* The project is located on the Susquehanna River at river mile 22 and its tributary Muddy Run, in Lancaster and York counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Ms. Kimberly Long, FERC License Compliance Manager, Exelon Power, 300 Exelon Way, Kennett Square, PA 19348, (610) 765–5572.

i. *FERC Contact:* Mr. Kevin Anderson, (202) 502–6465, *kevin.anderson@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* June 23, 2016.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2355–021.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee filed a revised recreation management plan pursuant to Article 407 of the license order issued December 22, 2015. The proposed revised plan includes: (1) Tables documenting all project recreation facilities and amenities; (2) a schedule for implementing recreation site improvements; and (3) a provision for monitoring and reporting on recreation use and demand and updating the plan, as needed, throughout the license term. Aside from these revisions and other minor edits, other aspects of the current recreation management plan would remain the same.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: May 23, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–12709 Filed 5–27–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP15–93–001; CP15–93–000]

Rover Pipeline LLC; Notice of Amendment to Application

Take notice that on May 19, 2016, Rover Pipeline LLC (Rover), 1300 Main Street, Houston, Texas 77002, filed an amendment to its application in Docket No. CP15–93–000, pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for a certificate of public convenience and necessity to construct and operate the Rover Pipeline Project. Specifically, Rover filed an amendment to its proposed pro forma tariff and updated Exhibits K, L, N, O, and P, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning these applications may be directed to Stephen Veatch, Senior Director of Certificates, Rover Pipeline LLC, 1300 Main Street, Houston, Texas 77002, by telephone at (713) 989–2024, by facsimile at (713) 989–1205, or by email at *stephen.veatch@energytransfer.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental impact statement (EIS) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) for this proposal. The filing of the FEIS in the Commission's public record for this proceeding or the issuance of a Notice of Schedule will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 5 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: June 14, 2016.

Dated: May 24, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–12702 Filed 5–27–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9947–14–OAR]

Intent To Disclose Confidential Business Information Contained in Vehicle Sales Data for Model Years 2009–2014 to the U.S. Energy Information Administration for Use in Modeling and Projecting Energy Demand in the Light-Duty Vehicle Sector

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On May 12, 2016, the Environmental Protection Agency received a written request from the U.S. Energy Information Administration (EIA) for historical model year sales data

for years 2009 through 2014 by manufacturer and nameplate. This requested data may contain confidential business information (CBI). Pursuant to 40 CFR 2.209(c), the EPA may disclose business information to other Federal agencies that otherwise is not available to the public if certain requirements are met. The EPA intends to share certain information, detailed below, with EIA ten (10) days after publication of this notice. The information requested has been used to model and project energy demand in the light-duty vehicle sector and is critical to EIA's efforts to project energy demand, fuel efficiency, fuel consumption, and greenhouse gas emissions for the transportation sector. EIA has agreed to keep the data confidential and not disclose it further.

DATES: The sales data will be disclosed to EIA on or after June 10, 2016.

FOR FURTHER INFORMATION CONTACT: Sara Zaremski, Office of Transportation and Air Quality, Compliance Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4362; fax number: 734–214– 4053; email address: *zaremski.sara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected by this action are those involved with the production and sale of motor vehicles. Regulated categories include:

Category	NAICS[1] codes	SIC[2] codes	Examples of potentially regulated entities
Industry	336111, 336112	3711	Light-duty vehicle and light-duty truck manufacturers.

[1] North American Industry Classification System (NAICS)

[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the disclosure.

II. EIA's Request for Model Year Sales Data for Years 2009–2014

In their May 12, 2016 request letter to EPA, EIA requested that EPA provide to EIA historical model year sales data for years 2009 through 2014 by manufacturer and nameplate. As noted above, EIA uses this information to model and project energy demand in the light-duty vehicle sector. Additionally, EIA noted that these data are critical to EIA's continued efforts to project energy demand, fuel efficiency, fuel consumption, and greenhouse gas emissions for the transportation sector. Previously, EIA had been unable to obtain official model year sales data for 2009 through 2014 due to the fact that it contained CBI. The specific data they requested includes all the data fields currently available in the Excel files provided on the fueleconomy.gov Web site (see the Download Fuel Economy Data page at *http://www.fueleconomy.gov/feg/download.shtml*). Additionally, EIA requested the following data fields: model year sales, tank size, track width, wheelbase, curb weight, horsepower, interior volume, fleet (DP, IP, LT), and test weight.

EIA indicated that they are aware that this information is subject to claims of confidential business information. EIA's letter states "We will take the necessary steps to ensure the data are secure and kept confidential. EIA routinely works with sensitive data and has strong data handling safeguards in place."

Pursuant to 40 CFR 2.209(c), EPA may disclose business information to another Federal agency if: (1) EPA receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency; (2) the request sets forth the official purpose for which the information is needed; (3) when the information has been claimed as confidential or has been determined to be confidential, the responsible EPA office provides notice to each affected business of the type of information to be disclosed and to whom it is to be disclosed, and such notice may be given by notice published in the **Federal Register** at least 10 days prior to disclosure; (4) EPA notifies the other agency of any unresolved business confidentiality claim covering the information and of any determination under this subpart that the information is entitled to confidential treatment, and that further disclosure of the information may be a violation of the Trade Secrets Act, 18 U.S.C. 1905; and (5) the other agency agrees in writing that in accordance with the law, it will not disclose further any information designated as confidential.

In the case at hand, all of the required elements of 40 CFR 2.209(c) have been met upon publication of this notice.

III. Impact on Vehicle Manufacturers

Given that EIA is aware that the shared information is CBI or has been claimed as CBI, and intends to take the necessary steps to ensure that the data provided is kept secure and confidential, there is no impact on vehicle manufacturers to the release of this data.

Dated: May 24, 2016.

Byron J. Bunker,

Director, Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2016–12802 Filed 5–27–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1218]

Information Collection Approved by the Office of Management and Budget (OMB)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for a new information collection pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid control number. Comments about the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Cathy Williams, Office of the Managing Director, at (202) 418–2918, or email: *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1218.

OMB Approval Date: May 23, 2016.

OMB Expiration Date: May 31, 2019.

Title: Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules

Respondents: Business or other for profit entities.

Number of Respondents/Responses: 11 respondents; 11 responses.

Estimated Hours per Response: 0.25 hours (15 minutes).

Frequency of Response: Third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 3 hours.

Total Annual Cost: None.

Obligation To Respond: Required in order to monitor regulatory compliance. The statutory authority for this information collection is contained in sections 4, 303, 614, and 615 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: The information collection imposes a notification requirement on certain small cable systems that become ineligible for exemption from the requirement to carry high definition broadcast signals in HD (adopted in FCC 15–65). In particular, the information collection requires that, beginning December 12, 2016, at the time a small cable system utilizing the HD carriage exemption offers any programming in HD, the system must give notice that it is offering HD programming to all broadcast stations in its market that are carried on its system. Cable operators also must keep records of such notification. This information collection requirement allows affected broadcast stations to monitor compliance with the requirement that cable operators transmit high definition broadcast signals in HD.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2016–12682 Filed 5–27–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1000]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before August 1, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1000.

Title: Section 87.147, Authorization of Equipment.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 25 respondents; 25 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: One time and occasion reporting requirements and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154, 303 and 307(e) of the Communications Act of 1934, as amended.

Total Annual Burden: 25 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: Section 87.147 is needed to require applicants for aviation equipment certification to submit a Federal Aviation Administration (FAA) determination of the equipment's compatibility with the National Airspace System (NAS). This will ensure that radio equipment operating in certain frequencies is compatible with the NAS, which shares system components with the military. The notification must describe the equipment, along with a report of measurements, give the manufacturer's identification, antenna characteristics, rated output power, emission type and characteristics, the frequency or frequencies of operation, and essential receiver characteristics if protection is required.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2016–12664 Filed 5–27–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 16–572]

Disability Advisory Committee; Announcement of Next Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the date of the next meeting of the Commission's Disability Advisory

Committee (Committee or DAC). The meeting is open to the public. During this meeting, members of the Committee will receive and discuss summaries of activities and recommendations from its subcommittees.

DATES: The Committee's next meeting will take place on Thursday, June 16, 2016, from 9:00 a.m. to 3:30 p.m. (EST).

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, in the Commission Meeting Room.

FOR FURTHER INFORMATION CONTACT: Elaine Gardner, Consumer and Governmental Affairs Bureau: 202–418–0581 (voice); email: *DAC@fcc.gov;* or Suzy Rosen Singleton, Alternate DAC Designated Federal Officer, Consumer and Governmental Affairs Bureau: 202–510–9446 (VP/voice), at the same email address: *DAC@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Committee was established in December 2014 to make recommendations to the Commission on a wide array of disability matters within the jurisdiction of the Commission, and to facilitate the participation of people with disabilities in proceedings before the Commission. The Committee is organized under, and operated in accordance with, the provisions of the Federal Advisory Committee Act (FACA). The Committee held its first meeting on March 17, 2015.

At its June 16, 2016 meeting, the Committee is expected to receive and consider a report on the activities of its Communications Subcommittee; a report and recommendation from its Emergency Communications Subcommittee regarding proposed DAC comments on the Commission's Notice of Proposed Rulemaking on Wireless Emergency Alerts; a report on the activities of its Relay & Equipment Distribution Subcommittee; a report and recommendation from its Technology Transitions Subcommittee regarding the benefits of HD Voice and ways to address the transition to HD Voice; and a report and possible recommendation from its Video Programming Subcommittee regarding appropriate capitalization of offline captioning of video programming. The Committee will also (1) hear presentations from Commission staff on recent activities; (2) hear reports from various FCC bureaus, including: A report from the FCC Wireline Competition Bureau on the modernization of the Lifeline program; a report from FCC Media Bureau on the commercial availability of set top boxes and the expansion of video description; and an update on the ACE Direct project; and (3) discuss new issues for its consideration.

A limited amount of time may be available on the agenda for comments and inquiries from the public. The public may comment or ask questions of presenters via the email address *livequestions@fcc.gov.*

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. If making a request for an accommodation, please include a description of the accommodation you will need and tell us how to contact you if we need more information. Make your request as early as possible by sending an email to *fcc504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY). Last minute requests will be accepted, but may be impossible to fill. The meeting will be webcast with open captioning, at: *www.fcc.gov/live.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Federal Communications Commission.

Karen Peltz Strauss,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2016–12710 Filed 5–27–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission

DATE & TIME: *Thursday, May 26, 2016 At 10:00 a.m.*

PLACE: 999 E Street NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

Federal Register Notice of Previous Anouncement—81 FR 32753

CHANGE IN THE MEETING: The May 26, 2016 meeting was cancelled.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2016–12820 Filed 5–26–16; 11:15 am]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–0666; Docket No. CDC–2016–0046]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the National Healthcare Safety Network (NHSN). NHSN is a system designed to accumulate, exchange, and integrate relevant information and resources among private and public stakeholders to support local and national efforts to protect patients and promote healthcare safety.

DATES: Written comments must be received on or before August 1, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0046 by any of the following methods:

- *Federal eRulemaking Portal: Regulation.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov.*

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information

Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

National Healthcare Safety Network (NHSN)—Revision—National Center for Emerging and Zoonotic Infection Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Healthcare Safety Network (NHSN) is a system designed to accumulate, exchange, and integrate relevant information and resources among private and public stakeholders to support local and national efforts to protect patients and promote healthcare safety. Specifically, the data is used to determine the magnitude of various healthcare-associated adverse events and trends in the rates of these events among patients and healthcare workers with similar risks. The data will be used to detect changes in the epidemiology of adverse events resulting from new and current medical therapies and changing risks. The NHSN currently consists of five components: Patient Safety, Healthcare Personnel Safety, Biovigilance, Long-Term Care Facility (LTCF), and Dialysis. The Outpatient Procedure Component is on track to be released in NHSN in 2017/2018. The development of this component has been previously delayed to obtain additional user feedback and support from outside partners.

Changes were made to six facility surveys and two new facility surveys were added. Based on user feedback and internal reviews of the annual facility surveys it was determined that questions and response options be amended, removed, or added to fit the evolving uses of the annual facility surveys. The surveys are being increasingly used to help intelligently interpret the other data elements reported into NHSN. Currently the surveys are used to appropriately risk adjust the numerator and denominator data entered into NHSN while also guiding decisions on future division priorities for prevention.

Further, three new forms were added to expand NHSN surveillance to pediatric ventilator-associated events, adult sepsis, and custom HAI event surveillance. An additional 14 forms were added to the Hemovigilance Component to streamline data collection/entry for adverse reaction events.

Additionally, minor revisions have been made to 22 forms within the package to clarify and/or update surveillance definitions. The previously approved NHSN package included 52 individual collection forms; the current revision request adds nineteen forms and removes one form for a total of 70 forms. The reporting burden will increase by 489,174 hours, for a total of 5,110,716 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per Respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Registered Nurse (Infection Preventionist).	57.100 NHSN Registration Form	2,000	1	5/60	167
Registered Nurse (Infection Preventionist).	57.101 Facility Contact Information	2,000	1	10/60	333
Registered Nurse (Infection Preventionist).	57.103 Patient Safety Component—Annual Hospital Survey.	5,000	1	55/60	4,583
Registered Nurse (Infection Preventionist).	57.105 Group Contact Information	1,000	1	5/60	83
Registered Nurse (Infection Preventionist).	57.106 Patient Safety Monthly Reporting Plan.	6,000	12	15/60	18,000
Registered Nurse (Infection Preventionist).	57.108 Primary Bloodstream Infection (BSI).	6,000	44	30/60	132,000
Registered Nurse (Infection Preventionist).	57.111 Pneumonia (PNEU)	6,000	72	30/60	216,000
Registered Nurse (Infection Preventionist).	57.112 Ventilator-Associated Event	6,000	144	25/60	360,000
Registered Nurse (Infection Preventionist).	57.113 Pediatric Ventilator-Associated Event (PedVAE).	2,000	120	25/60	100,000

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per Respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Registered Nurse (Infection Preventionist).	57.114 Urinary Tract Infection (UTI)	6,000	40	20/60	80,000
Registered Nurse (Infection Preventionist).	57.115 Custom Event	2,000	91	35/60	106,167
Staff RN	57.116 Denominators for Neonatal Intensive Care Unit (NICU).	6,000	9	3	162,000
Staff RN	57.117 Denominators for Specialty Care Area (SCA)/Oncology (ONC).	6,000	9	5	270,000
Staff RN	57.118 Denominators for Intensive Care Unit (ICU)/Other locations (not NICU or SCA).	6,000	60	5	1,800,000
Registered Nurse (Infection Preventionist).	57.120 Surgical Site Infection (SSI)	6,000	36	35/60	126,000
Staff RN	57.121 Denominator for Procedure	6,000	540	10/60	540,000
Laboratory Technician	57.123 Antimicrobial Use and Resistance (AUR)-Microbiology Data Electronic Upload Specification Tables.	6,000	12	5/60	6,000
Pharmacist	57.124 Antimicrobial Use and Resistance (AUR)-Pharmacy Data Electronic Upload Specification Tables.	6,000	12	5/60	6,000
Registered Nurse (Infection Preventionist).	57.125 Central Line Insertion Practices Adherence Monitoring.	1,000	100	25/60	41,667
Registered Nurse (Infection Preventionist).	57.126 MDRO or CDI Infection Form.	6,000	72	30/60	216,000
Registered Nurse (Infection Preventionist).	57.127 MDRO and CDI Prevention Process and Outcome Measures Monthly Monitoring.	6,000	24	15/60	36,000
Registered Nurse (Infection Preventionist).	57.128 Laboratory-identified MDRO or CDI Event.	6,000	240	20/60	480,000
Registered Nurse (Infection Preventionist).	57.129 Adult Sepsis	50	250	25/60	5,208
Registered Nurse (Infection Preventionist).	57.137 Long-Term Care Facility Component—Annual Facility Survey.	350	1	1.08	378
Registered Nurse (Infection Preventionist).	57.138 Laboratory-identified MDRO or CDI Event for LTCF.	350	12	15/60	1,050
Registered Nurse (Infection Preventionist).	57.139 MDRO and CDI Prevention Process Measures Monthly Monitoring for LTCF.	350	12	10/60	700
Registered Nurse (Infection Preventionist).	57.140 Urinary Tract Infection (UTI) for LTCF.	350	14	30/60	2,450
Registered Nurse (Infection Preventionist).	57.141 Monthly Reporting Plan for LTCF.	350	12	5/60	350
Registered Nurse (Infection Preventionist).	57.142 Denominators for LTCF Locations.	350	12	3.35	14,070
Registered Nurse (Infection Preventionist).	57.143 Prevention Process Measures Monthly Monitoring for LTCF.	300	12	5/60	300
Registered Nurse (Infection Preventionist).	57.150 LTAC Annual Survey	400	1	55/60	367
Registered Nurse (Infection Preventionist).	57.151 Rehab Annual Survey	1,000	1	55/60	917
Occupational Health RN/Specialist	57.200 Healthcare Personnel Safety Component Annual Facility Survey.	50	1	8	400
Occupational Health RN/Specialist	57.203 Healthcare Personnel Safety Monthly Reporting Plan.	17,000	1	5/60	1,417
Occupational Health RN/Specialist	57.204 Healthcare Worker Demographic Data.	50	200	20/60	3,333
Occupational Health RN/Specialist	57.205 Exposure to Blood/Body Fluids.	50	50	1	2,500
Occupational Health RN/Specialist	57.206 Healthcare Worker Prophylaxis/Treatment.	50	30	15/60	375
Laboratory Technician	57.207 Follow-Up Laboratory Testing.	50	50	15/60	625
Occupational Health RN/Specialist	57.210 Healthcare Worker Prophylaxis/Treatment-Influenza.	50	50	10/60	417

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per Respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Medical/Clinical Laboratory Technologist.	57.300 Hemovigilance Module Annual Survey.	500	1	2	1,000
Medical/Clinical Laboratory Technologist.	57.301 Hemovigilance Module Monthly Reporting Plan.	500	12	1/60	100
Medical/Clinical Laboratory Technologist.	57.303 Hemovigilance Module Monthly Reporting Denominators.	500	12	1.17	7,020
Medical/Clinical Laboratory Technologist.	57.305 Hemovigilance Incident	500	10	10/60	833
Medical/Clinical Laboratory Technologist.	57.306 Hemovigilance Module Annual Survey—Non-acute care facility.	200	1	35/60	117
Medical/Clinical Laboratory Technologist.	57.307 Hemovigilance Adverse Reaction—Acute Hemolytic Transfusion Reaction.	500	4	25/60	833
Medical/Clinical Laboratory Technologist.	57.308 Hemovigilance Adverse Reaction—Allergic Transfusion Reaction.	500	4	25/60	833
Medical/Clinical Laboratory Technologist.	57.309 Hemovigilance Adverse Reaction—Delayed Hemolytic Transfusion Reaction.	500	1	25/60	208
Medical/Clinical Laboratory Technologist.	57.310 Hemovigilance Adverse Reaction—Delayed Serologic Transfusion Reaction.	500	2	25/60	417
Medical/Clinical Laboratory Technologist.	57.311 Hemovigilance Adverse Reaction—Febrile Non-hemolytic Transfusion Reaction.	500	4	25/60	833
Medical/Clinical Laboratory Technologist.	57.312 Hemovigilance Adverse Reaction—Hypotensive Transfusion Reaction.	500	1	25/60	208
Medical/Clinical Laboratory Technologist.	57.313 Hemovigilance Adverse Reaction—Infection.	500	1	25/60	208
Medical/Clinical Laboratory Technologist.	57.314 Hemovigilance Adverse Reaction—Post Transfusion Purpura.	500	1	25/60	208
Medical/Clinical Laboratory Technologist.	57.315 Hemovigilance Adverse Reaction—Transfusion Associated Dyspnea.	500	1	25/60	208
Medical/Clinical Laboratory Technologist.	57.316 Hemovigilance Adverse Reaction—Transfusion Associated Graft vs. Host Disease.	500	1	25/60	208
Medical/Clinical Laboratory Technologist.	57.317 Hemovigilance Adverse Reaction—Transfusion Related Acute Lung Injury.	500	1	25/60	208
Medical/Clinical Laboratory Technologist.	57.318 Hemovigilance Adverse Reaction—Transfusion Associated Circulatory Overload.	500	2	25/60	417
Medical/Clinical Laboratory Technologist.	57.319 Hemovigilance Adverse Reaction—Unknown Transfusion Reaction.	500	1	25/60	208
Medical/Clinical Laboratory Technologist.	57.320 Hemovigilance Adverse Reaction—Other Transfusion Reaction.	500	1	25/60	208
Medical/Clinical Laboratory Technologist.	57.400 Patient Safety Component—Annual Facility Survey for Ambulatory Surgery Center (ASC).	5,000	1	5/60	417
Staff RN	57.401 Outpatient Procedure Component—Monthly Reporting Plan.	5,000	12	15/60	15,000
Staff RN	57.402 Outpatient Procedure Component Event.	5,000	25	40/60	83,333
Staff RN	57.403 Outpatient Procedure Component—Monthly Denominators and Summary.	5,000	12	40/60	40,000
Staff RN	57.500 Outpatient Dialysis Center Practices Survey.	6,500	1	2.0	13,000
Registered Nurse (Infection Preventionist).	57.501 Dialysis Monthly Reporting Plan.	6,500	12	5/60	6,500
Staff RN	57.502 Dialysis Event	6,500	60	25/60	162,500
Staff RN	57.503 Denominator for Outpatient Dialysis.	6,500	12	10/60	13,000

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per Respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Staff RN	57.504 Prevention Process Measures Monthly Monitoring for Dialysis.	1,500	12	1.25	22,500
Staff RN	57.505 Dialysis Patient Influenza Vaccination.	325	75	10/60	4,063
Staff RN	57.506 Dialysis Patient Influenza Vaccination Denominator.	325	5	10/60	271
Staff RN	57.507 Home Dialysis Center Practices Survey.	600	1	25/60	250
Total		5,110,716			

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–12701 Filed 5–27–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-16-16TM]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Prevalence Survey of Healthcare-Associated Infections and Antimicrobial Use in U.S. Nursing Homes—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Preventing healthcare-associated infections (HAI) and encouraging appropriate use of antimicrobials are priorities of both the U.S. Department of Health and Human Services and the Centers for Disease Control and Prevention. The burden and epidemiology of HAIs and antimicrobial use in U.S. nursing homes is currently unknown. Understanding the scope and magnitude of all types of HAIs in patient populations across the spectrum of U.S. healthcare facilities is essential to the development of effective prevention and control strategies and policies.

HAI prevalence and antimicrobial use estimates can be obtained through prevalence surveys in which data are collected in healthcare facilities during a short, specified time period. Essential steps in reducing the occurrence of HAIs and the prevalence of resistant pathogens include estimating the burden, types, and causative organisms of HAIs; assessing the nature and extent of antimicrobial use in U.S. healthcare facilities; and assessing the nature and extent of antimicrobial use.

Prevalence surveys, in which data are collected in healthcare facilities during a short, specified time period represent an efficient and cost-effective alternative to prospective studies of HAI and antimicrobial use incidence. Given the absence of existing HAI and antimicrobial use data collection mechanisms for nursing homes, prevalence surveys represent a robust method for obtaining the surveillance data required to identify HAIs and antibiotic use practices that should be targeted for more intensive surveillance and to guide and evaluate prevention efforts.

The methods for the data collection are based on those used in CDC hospital prevalence surveys and informed by a CDC pilot survey conducted in nine U.S. nursing homes. The survey will be performed by the CDC through the Emerging Infections Program (EIP), a collaboration with CDC and 10 state health departments with experience in HAI surveillance and data collection. Respondents are nursing homes certified by the Centers for Medicare & Medicare Services in EIP states. Nursing homes will be randomly selected for participation. The EIP will recruit 20 nursing homes in each of the 10 EIP sites. Nursing home participation is voluntary.

OMB approval is requested for three years. Participation is voluntary and there are no costs to respondents other than their time. The total estimated annual burden hours are 5,217.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avgerage burden per response (in hrs.)
Director of Nursing, Registered Nurse, Infection Control and Prevention Officer.	Healthcare Facility Assessment.	200	1	45/60
Registered Nurse	Residents by Location Form	200	38	20/60
Licensed Practical or Licensed Vocational Nurses	200	38	20/60	

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–12705 Filed 5–27–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-16-0984]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

DELTA FOCUS Program Evaluation (OMB No. 0920–0984)—Reinstatement with Change—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Intimate Partner Violence (IPV) is a serious, preventable public health problem that affects millions of Americans and results in serious consequences for victims, families, and communities. IPV occurs between two people in a close relationship. The term "intimate partner" describes physical, sexual, or psychological harm by a current or former partner or spouse. IPV can impact health in many ways, including long-term health problems, emotional impacts, and links to negative health behaviors. IPV exists along a continuum from a single episode of violence to ongoing battering; many victims do not report IPV to police, friends, or family. In 2002, authorized by the Family Violence Prevention Services Act (FVPSA), CDC developed the Domestic Violence Prevention Enhancements and Leadership Through Alliances (DELTA) Program, with a focus on the primary prevention of IPV.

The purpose of the DELTA FOCUS program is to promote the prevention of IPV through the implementation and evaluation of strategies that create a foundation for the development of practice-based evidence. By emphasizing primary prevention, this program will support comprehensive and coordinated approaches to IPV prevention. On March 2, 2013, CDC awarded 10 cooperative agreements to state domestic violence coalitions (SDVCs).

Each SDVC is required to identify and fund one to two well-organized, broad-based, active local organizations (referred to as coordinated community responses or CCRs) that are already engaging in, or are at capacity to engage in, IPV primary prevention strategies affecting the structural determinants of health at the societal and/or community levels of the SEM. SDVCs must facilitate and support local-level implementation and hire empowerment evaluators (EEs) to support the evaluation of IPV prevention strategies by the CCRs. SDVCs must also implement and with their empowerment evaluators, evaluate state-level IPV prevention strategies.

The CDC seeks OMB approval for three years to collect program evaluation data. Information will be collected from awardees funded under FOA–CE13–1302, the DELTA FOCUS (Domestic Violence Prevention Enhancement and Leadership Through Alliances, Focusing on Outcomes for Communities United with States) cooperative agreement program. The information will be used to guide program improvements by CDC in the national DELTA FOCUS program implementation and program improvements by SDVCs in implementation of the program within their state. Not collecting this data could result in inappropriate implementation, resulting in ineffective use of tax payer resources. Thus, this data collection is an essential program evaluation activity and the results will not be generalizable to the universe of study. The estimated annual burden hours are 59. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
DELTA FOCUS Awardees (SDVC executive directors, SDVC project coordinators, SDVC empowerment evaluators, and SDVC-funded CCR project coordinators).	DELTA FOCUS Survey	59	1	1

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–12706 Filed 5–27–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–855(A, B, I)]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *June 30, 2016.*

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR,* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Enrollment Application; *Use:* The primary function of the CMS–855 Medicare enrollment application is to gather information from a provider or supplier that tells us who it is, whether it meets certain qualifications to be a health care provider or supplier, where it practices or renders its services, the identity of the owners of the enrolling entity, and other information necessary to establish correct claims payments. No comments were received during the 60-day comment period (April 1, 2016 (81 FR 18855)). *Form Number:* CMS–855(A, B, I) (OMB control number: 0938–0685); *Frequency:* Annually; *Affected Public:* Private Sector; Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 1,735,800; *Total Annual Responses:* 86,480; *Total Annual Hours:* 290,193. (For policy questions regarding this collection contact Kimberly McPhillips at 410–786–5374.)

Dated: *May 25, 2016.*

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–12694 Filed 5–27–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Advisory Committee; Allergenic Products Advisory Committee, Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Allergenic Products Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Allergenic Products Advisory Committee for an additional 2 years beyond the charter

expiration date. The new charter will be in effect until July 9, 2018.

DATES: Authority for the Allergenic Products Advisory Committee will expire on July 9, 2016, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Janie Kim, Division of Scientific Advisors and Consultants, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6129, Silver Spring, MD 20993–0002; 301–796–9016, *Janie.kim@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services pursuant to 45 CFR part 11 and by the General Services Administration, FDA is announcing the renewal of the Allergenic Products Advisory Committee (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic disease, and makes appropriate recommendations to the Commissioner of its findings regarding the affirmation or revocation of biological product licenses, on the safety, effectiveness, and labeling of the products, on clinical and laboratory studies of such products, on amendments or revisions to regulations governing the manufacture, testing, and licensing of allergenic biological products, and on the quality and relevance of FDA's research programs which provide the scientific support for regulating these agents.

The Committee shall consist of a core of nine voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of allergy, immunology, pediatrics, internal medicine, biochemistry, and related specialties. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting member who is identified with industry interests.

Further information regarding the most recent charter and other information can be found at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/BloodVaccinesandOtherBiologics/AllergenicProductsAdvisoryCommittee/ucm129360.htm* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: May 24, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–12636 Filed 5–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Advisory Committee; Psychopharmacologic Drugs Advisory Committee, Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Psychopharmacologic Drugs Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Psychopharmacologic Drugs Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until the June 4, 2018.

DATES: Authority for the Psychopharmacologic Drugs Advisory Committee will expire on June 4, 2016, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, *PDAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services pursuant to 45 CFR part 11 and by the General Services Administration, FDA is announcing the renewal of the Psychopharmacologic Drugs Advisory Committee. The committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Psychopharmacologic Drugs Advisory Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which the Food and Drug Administration has regulatory responsibility. The Committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the practice of psychiatry and related fields and make appropriate recommendations to the Commissioner of Food and Drugs.

The Committee shall consist of a core of nine voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of psychopharmacology, psychiatry, epidemiology or statistics, and related specialties. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting member who is identified with industry interests.

Further information regarding the most recent charter and other information can be found at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/PsychopharmacologicDrugsAdvisoryCommittee/ucm107528.htm* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: May 24, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–12637 Filed 5–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–3327]

Agency Information Collection Activities; Proposed Collection; Comment Request; E6(R2) Good Clinical Practice; International Council for Harmonisation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, we, or the Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collections of information marked as "ADDENDUM" in the draft guidance entitled "E6(R2) Good Clinical Practice" (E6(R2) draft guidance). The E6(R2) draft guidance was prepared under the auspices of the International Council for Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The E6(R2) draft guidance amends the guidance entitled "E6 Good Clinical Practice: Consolidated Guidance" (E6(R1) consolidated guidance), issued in April 1996, to encourage implementation of improved and more efficient approaches to clinical trial design, conduct, oversight, recording, and reporting while continuing to ensure human subject protection and data integrity. Standards regarding electronic records and essential documents intended to increase clinical trial quality and efficiency have also been updated. The E6(R2) draft guidance was intended to improve clinical trial quality and efficiency while maintaining human subject protection. This notice solicits comments on the collection of information in the draft guidance concerning the development of a system to manage quality, as well as information to include in a clinical study report about the quality management approach.

DATES: Submit either electronic or written comments on the collection of information by August 1, 2016 on the "ADDENDUM" sections of the E6(R2) draft guidance.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submission" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2015–D–3327 for "Agency Information Collection Activities; Proposed Collection; Comment Request; E6(R2) Good Clinical Practice; International Council for Harmonisation." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

E6(R2) Good Clinical Practice Draft Guidance; International Council for Harmonisation OMB Control Number 0910–NEW

I. Background

In the **Federal Register** of September 29, 2015 (80 FR 58492), we announced the availability of and requested public comments on the E6(R2) draft guidance. The draft guidance is the product of the ICH E6 Expert Working Group of the ICH. The E6(R2) draft guidance provides additions to the E6(R1) consolidated guidance that are identified as "ADDENDUM" and marked with vertical lines on both sides of the text. The additions are intended to encourage implementation of the described approaches and processes to improve the quality and efficiency of clinical trials while maintaining the protection of human subjects. The E6(R2)draft guidance includes information collection provisions that are subject to review by OMB under the PRA. This **Federal Register** notice begins the process of requesting public comment and obtaining OMB approval for those information collections that are new and are not already covered by previously approved collections of information.

II. Burden Estimates for the E6(R2) Draft Guidance

The E6(R2) draft guidance recommends that sponsors develop and maintain a system to manage quality when designing, conducting, recording, evaluating, reporting, and archiving clinical trials. The draft guidance also recommends that the sponsor describe the quality management approach implemented in the trial and summarize important deviations from the predefined quality tolerance limits in the clinical study report. We are requesting OMB approval for the following collections of information identified in the "ADDENDUM" sections of the E6(R2) draft guidance and are inviting public comments on these sections.

In table 1 of this document, we estimate that approximately 1,457 sponsors of clinical trials of human drugs will develop approximately 1,457 quality management systems per year (as described in section 5.0 of the E6(R2) draft guidance). We further estimate that it will take sponsors approximately 60 hours to develop and implement each quality management system, totaling 87,420 hours annually. These estimates are based on the number of annual investigational new drug applications (IND) and new drug applications (NDA) submitted to the Center for Drug Evaluation and Research in previously approved collections of information. The estimated number of sponsors that will develop a quality management system as described in the guidance, as well as the estimated number of hours it will take, is based on FDA interactions with sponsors about activities that support drug development plans.

In table 2 of this document, we estimate that approximately 1,457 sponsors of clinical trials of human drugs will describe the quality management approach implemented in a clinical trial and summarize important deviations from the predefined quality tolerance limits in a clinical study report (as described in section 5.0.7 of the E6(R2) draft guidance). We further estimate that sponsors will submit approximately 4.6 responses per respondent and that it will take sponsors 3 hours to complete this reporting task, totaling 20,107 reporting hours annually. These estimates are based on past experiences with IND, NDA, and previously approved collections of information.

In table 3 of this document, we estimate that approximately 218 sponsors of clinical trials of biological products will develop approximately 218 quality management systems per year (as described in section 5.0.7 of the E6(R2) draft guidance). We further estimate that it will take sponsors approximately 60 hours to develop and implement each quality management system, totaling 13,080 hours annually. These estimates are based on past experiences with INDs, biologics license applications (BLA), and previously approved collections of information.

In table 4 of this document, we estimate that 218 sponsors of biological products will describe the quality management approach implemented in a clinical trial and summarize important deviations from the predefined quality tolerance limits in a clinical study report (as described in section 5.0.7 of the E6(R2) draft guidance). We further estimate that sponsors will submit approximately 3.69 responses per respondent and that it will take sponsors 3 hours to complete this reporting task, totaling 2,413 reporting hours annually. As described previously, these estimates are also based on past experiences with IND, BLA, and previously approved collections of information.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR HUMAN DRUGS [1]

E6(R2) Good Clinical Practice; International Council for Harmonisation; Draft Guidance for Industry	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Section 5.0—Quality Management (including sections 5.0.1 to 5.0.7)	1,457	1	1,457	60	87,420

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR HUMAN DRUGS[1]—Continued

E6(R2) Good Clinical Practice; International Council for Harmonisation; Draft Guidance for Industry	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Developing a Quality Management System.					

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS[1]

E6(R2) Good Clinical Practice; International Council for Harmonisation; Draft Guidance for Industry	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Section 5.0.7—Risk Reporting Describing the Quality Management Approach Implemented in a Clinical Trial and Summarizing Important Deviations From the Predefined Quality Tolerance Limits in a Clinical Study Report.	1,457	4.6	6,702	3	20,107

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS[1]

E6(R2) Good Clinical Practice; International Council for Harmonisation; Draft Guidance for Industry	Number of recordkeepers	Number of records per recordkeeper	Total records	Average burden per record	Total hours
Section 5.0—Quality Management (including 5.0.1 to 5.0.7) Developing a Quality Management System.	218	1	218	60	13,080

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 4—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICS[1]

E6(R2) Good Clinical Practice; International Council for Harmonisation; Draft Guidance for Industry	Number of responses	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Section 5.0.7—Risk Reporting Describing the Quality Management Approach Implemented in a Clinical Trial and Summarizing Important Deviations From the Predefined Quality Tolerance Limits in a Clinical Study Report.	218	3.69	804	3	2,413

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The collections of information included in the sections marked as "ADDENDUM" in the E6(R2) draft guidance also refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by OMB under the PRA. The collections of information found in 21 CFR part 11 have been approved under OMB control number 0910–0303; the collections of information found in 21 CFR part 312 have been approved under OMB control number 0910–0014; and collections of information found in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information found in 21 CFR part 601 have been approved under OMB control number 0910–0338.

Dated: May 24, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–12651 Filed 5–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–P–0403]

Determination That LEVOTHROID (Levothyroxine Sodium) Tablets, 0.025 Milligram, 0.05 Milligram, 0.075 Milligram, 0.088 Milligram, 0.112 Milligram, 0.125 Milligram, 0.137 Milligram, 0.15 Milligram, 0.175 Milligram, 0.1 Milligram, 0.2 Milligram, and 0.3 Milligram, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that LEVOTHROID

(levothyroxine sodium) tablets, 0.025 milligram (mg), 0.05 mg, 0.075 mg, 0.088 mg, 0.112 mg, 0.125 mg, 0.137 mg, 0.15 mg, 0.175 mg, 0.1 mg, 0.2 mg, and 0.3 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for LEVOTHROID (levothyroxine sodium) tablets, 0.025 mg, 0.05 mg, 0.075 mg, 0.088 mg, 0.112 mg, 0.125 mg, 0.137 mg, 0.15 mg, 0.175 mg, 0.1 mg, 0.2 mg, and 0.3 mg, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Reena Raman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6284, Silver Spring, MD 20993–0002, 301–796–7577.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is known generally as the "Orange Book." Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

LEVOTHROID (levothyroxine sodium) tablets, 0.025 mg, 0.05 mg, 0.075 mg, 0.088 mg, 0.112 mg, 0.125 mg, 0.137 mg, 0.15 mg, 0.175 mg, 0.1 mg, 0.2 mg, and 0.3 mg, are the subject of NDA 021116, held by Lloyd Inc., and initially approved on October 24, 2002. LEVOTHROID is used for the following indications:

- Hypothyroidism—As replacement or supplemental therapy in congenital or acquired hypothyroidism of any etiology, except transient hypothyroidism during the recovery phase of subacute thyroiditis. Specific indications include: Primary (thyroidal), secondary (pituitary), and tertiary (hypothalamic) hypothyroidism and subclinical hypothyroidism. Primary hypothyroidism may result from functional deficiency, primary atrophy, partial or total congenital absence of the thyroid gland, or from the effects of surgery, radiation, or drugs, with or without the presence of goiter.
- Pituitary Thyrotropine-Stimulating Hormone Suppression—In the treatment or prevention of various types of euthyroid goiters, including thyroid nodules, subacute or chronic lymphocytic thyroiditis (Hashimoto's thyroiditis), multinodular goiter, and as an adjunct to surgery and radioiodine therapy in the management of thyrotropin-dependent well-differentiated thyroid cancer.

LEVOTHROID (levothyroxine sodium) tablets, 0.025 mg, 0.05 mg, 0.075 mg, 0.088 mg, 0.112 mg, 0.125 mg, 0.137 mg, 0.15 mg, 0.175 mg, 0.1 mg, 0.2 mg, and 0.3 mg are currently listed in the "Discontinued Drug Product List" section of the Orange Book.

Lachman Consultant Services, Inc., submitted a citizen petition dated February 4, 2015 (Docket No. FDA–2015–P–0403), under 21 CFR 10.30, requesting that the Agency determine whether LEVOTHROID (levothyroxine sodium) tablets, 0.025 mg, 0.05 mg, 0.075 mg, 0.088 mg, 0.112 mg, 0.125 mg, 0.137 mg, 0.15 mg, 0.175 mg, 0.1 mg, 0.2 mg, and 0.3 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that LEVOTHROID (levothyroxine sodium) tablets, 0.025 mg, 0.05 mg, 0.075 mg, 0.088 mg, 0.112 mg, 0.125 mg, 0.137 mg, 0.15 mg, 0.175 mg, 0.1 mg, 0.2 mg, and 0.3 mg, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that this drug product was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of LEVOTHROID (levothyroxine sodium) tablets, 0.025 mg, 0.05 mg, 0.075 mg, 0.088 mg, 0.112 mg, 0.125 mg, 0.137 mg, 0.15 mg, 0.175 mg, 0.1 mg, 0.2 mg, and 0.3 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list LEVOTHROID (levothyroxine sodium) tablets, 0.025 mg, 0.05 mg, 0.075 mg, 0.088 mg, 0.112 mg, 0.125 mg, 0.137 mg, 0.15 mg, 0.175 mg, 0.1 mg, 0.2 mg, and 0.3 mg, in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to this drug product may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: May 24, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–12655 Filed 5–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Clinical Trial Design Considerations for Malaria Drug Development; Notice of Public Workshop; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of Tuesday, May 10, 2016 (81 FR 28876). The document announced a public workshop entitled "Clinical Trial Design Considerations for Malaria Drug Development." The document was

published with the incorrect title and incorrect Internet address in the *Transcripts* section. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Lori Benner and/or Jessica Barnes, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6221, Silver Spring, MD 20993–0002, 301–796–1300.

SUPPLEMENTARY INFORMATION: In FR Doc. 2016–10913, appearing on page 28876 in the **Federal Register** of Tuesday, May 10, 2016, the following corrections are made:

1. On page 28876, in the first column, the title is corrected to read "Clinical Trial Design Considerations for Malaria Drug Development."

2. On page 28876, in the second column, the *Transcripts* section is corrected to read "Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm.1061, Rockville, MD. A transcript will also be available in either hard copy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, Rm. 6–30, Rockville, MD 20857. Transcripts will also be available on the Internet at *http://www.fda.gov/Drugs/NewsEvents/ucm490084.htm* approximately 45 days after the workshop.

If you need special accommodations because of a disability, please contact Jessica Barnes or Lori Benner (see *Contact Person*) at least 7 days in advance."

Dated: May 24, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–12654 Filed 5–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–1269]

Collaboration in Regulatory Systems Strengthening and Standardization Activities To Increase Access to Safe and Effective Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces its intention to accept and consider a single source application for award of a cooperative agreement to the World Health Organization (WHO) in support of collaboration in regulatory systems strengthening, development of norms and standards, and innovative research to advance global access to safe and effective biological products that meet international standards. The goal of FDA's Center for Biologics Evaluation and Research (FDA/CBER) is to enhance technical collaboration and cooperation between the FDA, WHO, and its member states to facilitate strengthening regulatory capacity and support product development and standardization activities to increase access to safe and effective biologicals globally.

DATES: The application due date is July 5, 2016.

ADDRESSES: Submit electronic applications to *http://www.grants.gov.* For more information, see section III of the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Gopa Raychaudhuri, CBER Liaison to WHO, Office of the Director, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7250, Silver Spring, MD 20993, 240–402–8000, *gopa.raychaudhuri@fda.hhs.gov;* or Leslie Haynes, Foreign Regulatory Capacity Building Coordinator, International Affairs, Office of the Director, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7222, Silver Spring, MD 20993, 240–402–8074, *leslie.haynes@fda.hhs.gov;* or Bryce Jones, Grants Management Specialist, Division of Acquisition and Grants, Office of Acquisitions and Grants Services, Food and Drug Administration, 5630 Fishers Lane, Rm. 2026, Rockville, MD 20857, 240–402–2111, *Bryce.Jones@fda.hhs.gov.*

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at *http://www.grants.gov.* Search by Funding Opportunity Number: RFA–FD–16–044.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

RFA–FD–16–044
93.103

A. Background

WHO is the directing and coordinating authority on international health within the United Nations' (UN) system. It is responsible for providing leadership on global health matters, shaping the health research agenda, setting norms and standards, articulating evidence-based policy options, providing technical support to countries, and monitoring and assessing health trends. WHO assists countries in building capacity to increase and sustain access to medical products to prevent, detect, and treat communicable diseases, including reducing vaccine-preventable diseases. WHO also coordinates efforts to respond to public health emergencies by monitoring the health situation, undertaking risk assessments, identifying priorities, and providing technical guidance and other forms of support to countries and regions.

Providing adequate regulatory oversight throughout the product life cycle (pre- and post-licensure) is essential for assuring the safety, purity, and potency of vaccines and other biologicals. However, this is a major challenge for many National Regulatory Authorities (NRAs) confronted by a steadily increasing number of novel products, complex quality concerns, new regulatory issues arising from rapid technical and technological advances, and emerging infectious diseases (*e.g.,* pandemic influenza, Middle East Respiratory Syndrome, Ebola, Zika). WHO has an important role in strengthening regulatory systems and other supportive activities to increase access to high quality, safe, and effective biological products especially in low-and-middle-income countries. It is the only organization with the mandate, access to technical expertise, and broad reach to meet the research objectives.

FDA/CBER has been a leader and active participant in the global community to improve human health in the world's populations over many years. Its international engagements have been informed by the knowledge that protection of global public health against infectious disease threats translates into protection of public health in the United States. FDA, through CBER, has longstanding collaborations with WHO in the area of biologicals (vaccines, blood and blood products, relevant in vitro diagnostics, and cell and tissue therapies).

FDA/CBER has been a Pan American Health Organization/WHO Collaborating Center for Biological Standardization since 1998 with the current commitment running until 2020 and expectation of future extensions. As a WHO Collaborating Center for Biological Standardization, CBER has provided scientific and technical support to WHO for development of international standards, strengthening regulatory systems, advancing product safety and vigilance, vaccine prequalification, and research activities to advance development and improve standardization of vaccines and other biologicals. These areas of collaboration reflect FDA/CBER's longstanding commitment to increasing global access of high quality, safe and effective biological products that meet international standards.

1. Development of Norms and Standards

WHO plays a key role in establishing the WHO International Biological Reference Preparations and in developing WHO guidelines and recommendations on the production and control of vaccines and other biological products and technologies. The WHO Expert Committee on Biological Standardization (ECBS) is commissioned by WHO to advise the Organization on international standards setting activities. These norms and standards are based on wide scientific consultation and on international consensus and are intended to ensure the consistent quality and safety of biological products and related in vitro diagnostic tests worldwide.

Blood products are inherently variable due to the nature of the source materials as well as the methods used to test them. The objective is to ensure that only blood products of acceptable quality, safety, and efficacy are used in the patient population. Similarly, ensuring the quality, safety, and effectiveness of vaccines is one of WHO's highest priorities. The WHO works in close collaboration with the international scientific and professional communities, regional and national regulatory authorities, manufacturers, and expert laboratories worldwide to ensure that global standards are developed and made readily available to assess the quality, safety, and effectiveness of biological products, and to support monitoring safety throughout the product life cycle.

2. Regulatory Systems Strengthening

NRAs play a vital role in the national health care system. Providing regulatory oversight throughout the product life cycle (pre- and post-licensure) is a major challenge for many NRAs confronted by a steadily increasing number of novel products, complex quality concerns, new regulatory issues arising from rapid technical and technological advances, and emerging infectious diseases (*e.g.,* pandemic influenza, MERS, Ebola, Zika). WHO has an important role in strengthening regulatory systems to increase access to high quality, safe, and effective biological products especially in low-and-middle-income countries. In this era of globalization, establishment of robust regulatory systems in other regions of the world also benefits the U.S. population as it facilitates FDA's ability to better monitor and ensure the safety of the supply chain for medical and other products entering the United States from other countries.

3. WHO Prequalification Program

The WHO prequalification program was established in response to the need to supply quality health products, including vaccines and in vitro diagnostic tests for the prevention, diagnosis, and treatment of priority diseases in low-and-middle-income countries. Through the prequalification program, WHO assures the quality, safety, and effectiveness/performance of these products, and suitability for use in the target settings.

As part of the vaccine prequalification program, WHO provides advice to the United Nations Children's Fund (UNICEF) and other UN agencies on the acceptability, in principle, of vaccines considered for purchase by such agencies for vaccination programs they administer. An important part of the vaccine prequalification program is WHO's reliance upon a stringent NRA to provide regulatory oversight of the vaccine throughout the product's life cycle. In 2009, FDA entered into a confidentiality arrangement with WHO to enable FDA/CBER to serve as a NRA of record in the vaccine prequalification program and currently serves in this capacity for nine U.S. licensed, WHO prequalified vaccines.

4. Product Safety and Vigilance

The safety of medical products depends on a variety of factors that range from good manufacturing practices to strong national systems able to monitor the products in domestic markets. However, with increasing globalization of trade, overall effective surveillance of medical products depends on international regulatory cooperation and information sharing. WHO promotes the global safety of medical products by coordinating global networks for information sharing, such as data bases and monitoring and alert systems, and by supporting countries to develop national capacities for the post-marketing surveillance of biological products.

WHO and partners have developed a strategic framework ("Global Vaccine Safety Blueprint") to promote the establishment of effective vaccine pharmacovigilance systems globally. The Blueprint proposes a strategic plan for strengthening vaccine safety activities worldwide, focusing on building national capacity for vaccine safety in the world's poorest countries through the coordinated efforts of major stakeholders.

WHO advisory bodies also play a significant role in reviewing and assessing product safety data and making recommendations to WHO regarding use of vaccines and other biological products. For example, the Global Advisory Committee on Vaccine Safety (GACVS) provides independent, authoritative, scientific advice to WHO on vaccine safety issues of global or regional concern, and the Blood Regulators' Network (BRN) serves as an advisory body to WHO on matters related to safety and availability of blood and blood products.

5. Regulatory Science to Promote Development and Increased Access to Safe and Effective Biological Products

Regulatory science aims to contribute to the development of new tools, standards, and approaches to assess the safety, efficacy, quality, and performance of regulated biological products. Examples include tools to standardize assays used for regulatory purposes (*e.g.,* development of correlates of immunity; correlates of safety; improved methods for product characterization; new or alternative potency assays etc.). Results generated through methods and tools developed through regulatory science efforts such as adaptive clinical trial designs, benefit/risk assessment, novel pharmacovigilance methodologies, and other tools inform regulatory decisionmaking processes. Knowledge gained through regulatory science can play a significant role in regulatory decisionmaking, policy development, and preparedness to address threats from existing or emerging infectious diseases.

FDA, with other HHS technical agencies and offices, WHO, and other regulatory counterparts, are strategizing on approaches to increase access of the global population to safe and effective biological products for the prevention, diagnosis, and treatment of priority diseases, especially for use in low-and-middle-income countries. This project represents a collaborative effort between FDA and WHO (and complements and builds upon the U.S. Government's existing commitments with WHO) to support scientific collaboration and enhance regulatory capabilities of NRAs and networks to advance global access to safe and effective vaccines and other biologicals that meet international standards. This project will further support science-based and data-driven public health strategies and approaches, and lead to improved technical cooperation between FDA, WHO, and its member states.

B. Research Objectives

The project has the following goals:

1. Contribute to the Knowledge Base of the Current State of Regulatory Oversight of Vaccines and Other Biological Products

- Support NRA assessments and analyses and synthesis of the data, and development of an institutional development plan to enhance regulatory performance in low-and-middle-income countries. Assessment of regulatory systems could include but is not limited to, analyses and synthesis of existing data from assessments of vaccine regulatory capabilities of different NRAs, and new applications of assessment frameworks to specific areas, such as pharmacovigilance (*e.g.,* monitoring safety and effectiveness of new vaccines following introduction in a specific country or regional setting). NRA assessments also support WHO's vaccine prequalification program;
- Analysis of regulatory systems performance can include assessment of challenges, risks, and emerging trends, with the aim of further strengthening the development of data/information systems as sources of inputs for evidence-based regulatory decisions and actions; and
- Expected outputs could include analyses, reports, and data-driven strategy papers, among others.

2. Providing Technical Support to Regulatory Systems Strengthening Efforts

- Enable the strengthening of regulatory systems at the national and regional levels in such critical domains as good manufacturing, clinical, and laboratory practices; monitoring and evaluation of product quality; lot release; inspection and surveillance of products throughout the supply chain; pharmacovigilance systems building and analyses; risk assessment, analysis, and management etc.;
- Support the diffusion and application of knowledge, data, and information through active participation in regional and global committees and networks, such as the African Vaccine Regulatory Forum, ECBS, GACVS, BRN etc.; and
- Expected outputs could include analyses, reports, and data-driven strategy papers, among others.

3. Development of Global Norms and Standards

- Enable the timely and effective sharing of scientific findings and data through international collaboration to develop WHO International Biological Reference Preparations and WHO guidelines and recommendations on the production and control of vaccines and other biological products and technologies;
- Assist Member States in the implementation of internationally-recognized standards and guidelines, *e.g.* WHO guidelines and standards and those emerging from standards development venues such as the International Council for Harmonisation of the Technical Requirements for Pharmaceuticals for Human Use;
- Utilize WHO's convening power to engage with relevant stakeholders in support of data-driven and science-based public health strategies and approaches to enhancing global regulatory capacity and cooperation; and
- Expected outputs could include guideline documents, physical standards (*e.g.,* reference reagents, reference panels etc.), reports, and data-driven strategy papers, among others.

4. Support Regulatory Science and Other Activities To Promote Development and increased Access to Safe and Effective Biological Products

- Enable development of new tools, standards, and approaches to assess the safety, efficacy, quality, and performance of regulated biological products;
- Support programs, including but not limited to WHO prequalification, that increase access to safe and effective biological products; and
- Expected outputs could include analyses, reports, and data-driven strategy papers, among others.

C. Eligibility Information

The following organization is eligible to apply: WHO.

II. Award Information/Funds Available

A. Award Amount

FDA/CBER anticipates providing in FY2016 up to $2 million (total costs including indirect costs) for one award (subject to availability of funds) in support of this project. Future year amounts will depend on annual appropriations, availability of funding, and awardee performance. CBER anticipates providing four additional years of support up to the following amounts:

FY 2017: $2 million
FY 2018: $2 million
FY 2019: $2 million
FY 2020: $2 million

B. Length of Support

The support will be 1 year with the possibility of an additional 4 years of noncompetitive support. Continuation beyond the first year will be based on satisfactory performance during the preceding year, receipt of a noncompeting continuation application, and available Federal Fiscal Year appropriations.

III. Electronic Application, Registration, and Submission Information

Only electronic applications will be accepted. To submit an electronic application in response to this FOA, applicants should first review the full announcement located at *http://www.grants.gov.* Search by Funding Opportunity Number: RFA–FD–16–044. (FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**) For all electronically submitted applications, the following steps are required.

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number.
- Step 2: Register with System for Award Management (SAM)(formerly CCR).
- Step 3: Obtain Username & Password.
- Step 4: Authorized Organization Representative (AOR) Authorization.
- Step 5: Track AOR Status.
- Step 6: Register with Electronic Research Administration (eRA) Commons.

Steps 1 through 5, in detail, can be found at *http://www.grants.gov/web/grants/applicants/organization-registration.html.* Step 6, in detail, can be found at *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp.* After you have followed these steps, submit electronic applications to: *http://www.grants.gov.*

Dated: May 24, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–12685 Filed 5–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2015–E–3441 and FDA–2015–E–3439]

Determination of Regulatory Review Period for Purposes of Patent Extension; OLYSIO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for OLYSIO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by August 1, 2016. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 28, 2016. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2015–E–3441 or FDA–2015–E–3439 for "Determination of Regulatory Review Period for Purposes of Patent Extension; OLYSIO." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product OLYSIO (simeprevir). OLYSIO is indicated for treatment of chronic hepatitis C infection as a component of a combination antiviral treatment regimen. Subsequent to this approval, the USPTO received patent term restoration applications for OLYSIO (U.S. Patent Nos. 7,671,032 and 8,349,869) from Medivir AB and Janssen R&D Ireland, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated October 15, 2015, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of OLYSIO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for OLYSIO is 2,006 days. Of this time, 1,766 days occurred during the testing phase of the regulatory review period, while 240 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* May 28, 2008. FDA has verified the Medivir AB and Janssen R&D Ireland claim that May 28, 2008, is the date the investigational new drug application (IND) became effective.
2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* March 28, 2013. FDA has verified the applicant's claim that the new drug application (NDA) for OLYSIO (NDA 205123) was initially submitted on March 28, 2013.
3. *The date the application was approved:* November 22, 2013. FDA has verified the applicant's claim that NDA 205123 was approved on November 22, 2013.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension and amendments, the applicants seek 801 or 280 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see DATES). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see DATES) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Dated: May 24, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–12708 Filed 5–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Advisory Committee; Science Advisory Board to the National Center for Toxicological Research; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Science Advisory Board to the National Center for Toxicological Research (NCTR) by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Science Advisory Board to the National Center for Toxicological Research for an additional 2 years beyond the charter expiration date. The new charter will be in effect until June 2, 2018.

DATES: Authority for the Science Advisory Board to the National Center for Toxicological Research will expire on June 2, 2016, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Donna L. Mendrick, National Center for Toxicological Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 2208, Silver Spring, MD 20993–0002, 301–796–8892, *donna.mendrick@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services pursuant to 45 CFR part 11 and by the General Services Administration, FDA is announcing the renewal of the Science Advisory Board to the National Center for Toxicological Research. The committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Science Advisory Board to the National Center for Toxicological Research advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility. The Board advises the Director, NCTR, in establishing, implementing, and evaluation the research programs that assist the Commissioner of Food and Drugs in fulfilling his regulatory responsibilities. The Board provides an extra-agency review in ensuring that the research programs at NCTR are scientifically sound and pertinent.

The Committee shall consist of a core of nine voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of toxicological research. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons.

Further information regarding the most recent charter and other information can be found at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/ToxicologicalResearch/ucm148166.htm* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: May 24, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–12657 Filed 5–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Facilitating Antibacterial Drug Development for Patients With Unmet Need and Developing Antibacterial Drugs That Target a Single Species Media; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop regarding antibacterial drug development for patients with unmet need and developing antibacterial drugs that target a single species. FDA is interested in discussing the scientific challenges pertaining to such development programs, including enrollment challenges, clinical trial designs, and trial population. This public workshop is intended to provide information for and gain perspective from health care providers, other U.S. government Agencies, public health organizations, academic experts, and industry on various aspects of drug development for new antibacterial drugs for patients with unmet need and new antibacterial drugs that target a single species. The input from this public workshop will also help in developing topics for future discussion.

DATES: The public workshop will be held on July 18, 2016, from 8:30 a.m. to 5 p.m. and July 19, 2016, from 8:30 a.m. to 4 p.m. See the **SUPPLEMENTARY INFORMATION** section for registration information.

ADDRESSES: The public workshop will be held at FDA's White Oak campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

FOR FURTHER INFORMATION CONTACT: Lori Benner and/or Jessica Barnes, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6221 Silver Spring, MD 20993–0002, 301–796–1300.

SUPPLEMENTARY INFORMATION: FDA is announcing a public workshop regarding antibacterial drug development for patients with unmet need and developing antibacterial drugs that target a single species. Discussions will focus on potential development pathways, aspects of clinical trials including patient population, trial designs, and endpoints, and the role of clinical trial networks in antibacterial drug development.

Registration: Registration is free for the public workshop. Interested parties are encouraged to register early. Seating will be available on a first-come, first-served basis. To register electronically, email registration information (including name, title, firm name, address, telephone, and fax number) to *unmetneed2016@fda.hhs.gov.* Persons without access to the Internet can call 301–796–1300 to register.

If you need special accommodations due to a disability, please contact Jessica Barnes or Lori Benner (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance.

Agenda: The workshop draft Agenda will be made available at: *http://wwwfda.gov/Drugs/NewsEvents/ucm497650.htm* at least 2 days prior to the meeting. The Agency encourages individuals, industry, health care professionals, researchers, public health organizations and other interested persons to attend this public workshop.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. The Freedom of Information office address is available on the Agency's Web site at *http://www.fda.gov.* Transcripts will also be available on the Internet at: *http://wwwfda.gov/Drugs/NewsEvents/ucm497650.htm* approximately 45 days after the workshop.

Dated: May 24, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–12684 Filed 5–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will be held on August 10, 2016, from 8 a.m. to 6 p.m.

ADDRESSES: Gaithersburg Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD 20879. The hotel's telephone number is 301–948–8900. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Patricio G. Garcia, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1611, Silver Spring, MD 20993–0002, *Patricio.Garcia@fda.hhs.gov,* 301–796–6875, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION: *Agenda:* On August 10, 2016, the committee will discuss, make recommendations, and vote on information regarding a de novo request for the SEEKER Newborn Screening System (SEEKER System), by Baebies, Inc. The SEEKER System consists of the SEEKER Analyzer, the SEEKER 4-Plex Assay Kit, the SEEKER Cartridges, the Spot Logic software, and quality control materials; it uses digital microfluidic technology to measure multiple lysosomal enzymatic activities quantitatively from newborn dried blood spot specimens. The proposed Indication for Use for the SEEKER System device, as stated in the de novo request, is as follows:

The SEEKER System is intended for quantitative measurement of the activity of multiple lysosomal enzymes from newborn dried blood spot specimens. Reduced activity of these enzymes may be indicative of a lysosomal storage disorder. The enzymes measured using the SEEKER 4-Plex Assay Kit and their associated lysosomal storage disorder are listed in the following table.

Enzyme (abbreviation)	Disorder
α-L-iduronidase (IDUA)	Mucopolysaccharidosis Type I (MPS I) disease.
α-D-glucosidase (GAA)	Pompe disease.
β-glucocerebrosidase (GBA)	Gaucher disease.
α-D-galactosidase A (GLA)	Fabry disease.

Reduced activity for any of the four enzymes must be confirmed by other confirmatory diagnostic methods.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before August 3, 2016. On August 10, 2016, oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 26, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 27, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact AnnMarie Williams at *AnnMarie.Williams@fda.hhs.gov* or 301–796–5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 24, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–12658 Filed 5–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Sequencing Quality Control II; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop entitled "Sequencing Quality Control II." The purpose of the public workshop is to define the scope of project and study designs, and solicit participation of DNA sequencing community and stakeholders for data generation, management, analysis, and interpretation.

DATES: The public workshop will be held on September 13 and 14, 2016, from 8 a.m. to 5 p.m. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at Wilson Hall, Bldg. 1, National Institutes of Health (NIH), 31 Center Dr., Bethesda, MD 20892. Entrance for the public workshop participants (non-NIH employees) is through the NIH Gateway Center where routine security check procedures will be performed. For parking and security information, please refer to *https://www.nih.gov/about-nih/visitor-information/campus-access-security.*

FOR FURTHER INFORMATION CONTACT: Weida Tong, National Center for Toxicological Research (NCTR), Food and Drug Administration, 3900 NCTR Rd., Jefferson, AR 72079, 870–543–7142, FAX: 870–543–7854, *weida.tong@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA's Critical Path Initiative (*http://www.fda.gov/oc/initiatives/criticalpath/*) identifies pharmacogenomics as a key opportunity in advancing medical product development and personalized medicine. FDA has issued the "Guidance for Industry: Pharmacogenomic Data Submissions" (*http://www.fda.gov/downloads/drugs/guidancecomplianceregulatoryinformation/guidances/ucm079849.pdf*) to facilitate scientific progress in the field of pharmacogenomic data integration in drug development and medical diagnostics. Microarrays represent a core technology in pharmacogenomics and toxicogenomics; however, next-generation sequencing technologies promise to provide some unique advantages in DNA and RNA analyses and are expected to be adopted by the pharmaceutical and medical industries for advancing personalized nutrition and medicine.

Starting in 2005, FDA initiated an open project, MicroArray Quality Control (MAQC), which has gone through three phases. MAQC–I focused on the technical aspects of microarray-based gene expression measurements, the MAQC–II focused on validation of microarray-based predictive models, and MAQC–III, which is also called the Sequencing Quality Control (SEQC), focused on assessing the performance of whole transcriptome sequencing (RNA-seq).

The Sequencing Quality Control Phase 2 (SEQC–II) is a natural extension of the SEQC project with emphasis on DNA-Seq for various applications. The SEQC–II project, with broad participation from scientists and reviewers within FDA and collaborators across the public, academic, and private sectors, is expected to help prepare FDA for the next wave of submission of genomic data generated from the next-generation sequencing technologies.

Registration: Mail, fax, or email your registration information (including name, title, firm name, address, telephone, and fax numbers) to the contact person by August 31, 2016. FDA will email a confirmation to those who have registered. There is no registration fee for the public workshop. Early registration is recommended because seating is limited. No registration on the day of the public workshop will be provided.

If you need special accommodations due to a disability, please contact Weida Tong (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance.

Dated: May 24, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–12656 Filed 5–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will be held on July 21 and July 22, 2016, from 8 a.m. to 6 p.m.

ADDRESSES: Hilton Washington DC North/Gaithersburg, Salons A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel's telephone number is 301–977–8900. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Patricio Garcia, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, Rm. 1116, 10903 New Hampshire Ave., Silver Spring, MD 20993; *patricio.garcia@fda.hhs.gov;* 301–796–6875, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: On July 21, 2016, the committee will discuss, make recommendations, and vote on information regarding a premarket approval application (PMA) panel-track supplement for a proposed change in intended use of Dexcom, Inc.'s, Dexcom G5® Mobile Continuous Glucose Monitoring System (CGM) device so that, in addition to tracking and trending interstitial fluid glucose concentrations, patients can use the device as a replacement for their blood glucose meters and make treatment decisions based on the interstitial fluid glucose concentration reported by the CGM.

On July 22, 2016, the committee will discuss and make recommendations on information regarding a premarket notification (510(k)) submission for the Alere Afinion™ HbA1c Dx point-of-care test system, sponsored by Alere Technologies AS. The proposed intended use, as stated by the sponsor:

> Alere Afinion HbA1c Dx is an in vitro diagnostic test for quantitative determination of glycated hemoglobin (% hemoglobin A1c, HbA1c) in human whole blood. This test is to be used as an aid in the diagnosis of diabetes and as an aid in identifying patients who may be at risk for developing diabetes. The measurement of % HbA1c is recommended as a marker of long-term metabolic control in persons with diabetes mellitus. For use in clinical laboratories and point of care laboratory settings.

Current clinical guidelines contraindicate the use of point-of-care hemoglobin A1c (HbA1c) tests to diagnose diabetes. FDA is seeking feedback from the clinical community to determine significant, scientific and practical, reservations or support for using this point-of-care HbA1c test as an aid in the diagnosis of diabetes and pre-diabetes.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 15, 2016. Oral presentations from the public will be scheduled on July 21 and 22, 2016, between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 7, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 8, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact AnnMarie Williams, at *Annmarie.Williams@fda.hhs.gov*, or 301–796–5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 24, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–12641 Filed 5–27–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Ricky Malhotra, Ph.D., University of Michigan and University of Chicago: Based on the Respondent's admission to committing research misconduct at the University of Michigan (UM) and subsequently at the University of Chicago (UC), the reports of separate investigations conducted by UM and UC, and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Ricky Malhotra, former Research Assistant Professor, Department of Internal Medicine, UM, from 2005–2006, and Research Assistant Professor, Department of Surgery, UC, from 2007–2011, engaged in research misconduct in research supported by National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH), grants K08 HL081472 and R01 HL107949.

ORI found that falsified and/or fabricated data were included in the following three (3) NIH grant applications, one (1) NIH grant progress report, one (1) publication, seven (7) presentations, and one (1) image file:

- R03 AG029508–01
- R21 AG030361–01
- R01 HL102405–01
- K08 HL081472–05 Progress Report
- *J Biol Chem.* 285(18):13748–60, 2010 Apr 30 (hereafter referred to as "*JBC* 2010")
- Presentation: Autophagy Pathway.ppt, MKK4 expression after UV.ppt, Oct PPt.ppt, RicDec.ppt, Ricky Presentation 06.ppt, Ricky STC.ppt, and RM.ppt
- Image file: Final LC 3.jpg

ORI found that Respondent reused and falsely relabeled Western blot gel images, falsified the related densitometry measurements based on the falsified Western blots, and falsified and/or fabricated data for experiments that were not performed. Respondent continued this falsification at UC, after the UM research misconduct investigation was completed. Specifically:

- While at UM, Respondent falsified and/or fabricated images in R03 AG029508–01 and three (3) presentations, where:
  - R03 AG029508–01, Figure 2, represented Western blots for phosphorylated p53 (Ser15) and β-actin expression in normal and Snell dwarf mice fibroblasts (mN/SF) treated with the DNA alkylating agent methyl methanesulfonate (MMS), when the same images were duplicated to represent different proteins and treatments in the presentations Autophagy Pathway.ppt and RM.ppt.
  - R03 AG029508–01, Figure 3, represented Western blots for $p16^{Ink4a}$ and β-actin expression in mN/SF, when the same images were duplicated to represent different proteins and treatments in the presentations Autophagy Pathways.ppt, RicDec.ppt, and RM.ppt.
- While at UM, Respondent fabricated data in R21 AG030361–01 and supporting data for the grant application in the research record, where:
  - R21 AG030361–01, Figure 2, represented a Western blot for phosphorylated c-Jun-N-terminal kinase (JNK) expression in mN/SF exposed to cadmium, when the experiment was not performed.
  - The research record contained ninety (90) Western blot images and ninety (90) densitometry measurement files for 45 experiments that examined phosphorylated JNK or Mitogen-activated protein kinase 4 (MMK4) expression in mN/SF exposed to UV light, H_2O_2, cadmium, or anisomycin, when the experiments were not performed.
  - The research record contained densitometric analyses for an additional twenty-eight (28) experiments that examined phosphorylated JNK or MMK4 expression in mN/SF exposed to UV light, H_2O_2, cadmium, or anisomycin, when the quantifications were based on experiments that were not performed.
- While at UM, Respondent falsified and/or fabricated Western blots for phosphorylated and total Rac1/cdc42 expression in mN/SF, total JNK expression in mN/SF treated with anisomycin, phosphorylated JNK expression in Snell dwarf mice fibroblasts treated with cadmium, β-actin expression in mN/SF, β-actin expression in Snell dwarf mice fibroblasts treated with or without MMS, β-actin expression in normal mice fibroblasts treated with cadmium, and β-actin expression in mN/SF treated with H_2O_2 in the presentations Autophagy Pathway.ppt, Oct PPt.ppt, RicDec.ppt, Ricky Presentation 06.ppt, Ricky STC.ppt, and RM.ppt, and the image file Final LC 3.jpg, when the images were duplicated and falsely relabeled Western blots of unrelated experiments.
- While at UM, Respondent falsified twenty-four (24) Western blots for phosphorylated JNK or MMK4 expression in mN/SF exposed to UV light, H_2O_2, cadmium, or anisomycin in the seven (7) presentations and twenty-six (26) data files in the research record, when the images were duplicated and falsely relabeled Western blots of unrelated experiments.
- While at UC, Respondent falsified and/or fabricated Western blots by using images from unrelated experiments and the related densitometric analyses that were based on falsified Western blots in the following:
  - R01 HL102405–01 for:

—Figure 1A for phosphorylated Rhodopsin (Rho) expression in neonatal rat ventricular cardiac myocytes (NRVCM) subjected to stimulation with Angiotension II (Ang II)

—Figure 1A for G protein-coupled receptor kinase-2 (GRK2) expression in NRVCM subjected to cyclical mechanical stretch
—Figure 1B for densitometric analysis of GRK2 activity
—Figure 2A for phosphorylated Rho and GRK2 expression in NRVCM subjected to mechanical stretch
—Figure 2B for densitometric analysis of GRK2 activity
—Figure 3A for phosphorylated Rho expression in NRVCM after mechanical stretch and treatment with protein kinase C (PKC) inhibitor chelerythrine (lanes 5 and 6)
—Figure 3B for densitometric analyses of GRK2 activity after PKC inhibition via chelerythrine treatment

▪ K08 HL081472–05 Progress Report for:

—Figure 1A for phosphorylated Rho and GRK2 expression in NRVCM subjected to mechanical stretch
—Figure 1B for densitometric analyses of GRK2 activity after PKC inhibition via chelerythrine treatment

▪ *JBC* 2010 for:

—Figure 1B for phosphorylated Rho expression in NTVCM subjected to stimulation with Ang II
—Figure 1B for GRK2 expression in NRVCM subjected to cyclical mechanical stretch panel
—Figure 1C for densitometric analysis of GRK2 activity
—Figure 2A for phosphorylated Rho expression in NRVCM after mechanical stretch and treatment with the Ang II type 1 (AT_1) receptor antagonist Irbesartan (lanes 5 and 6)
—Figure 2B for densitometric analyses of GRK2 activity after PKC inhibition via Irbesartan treatment
—Figure 4C for phosphorylated Rho and GRK2 expression in NRVCM subjected to mechanical stretch
—Figure 4D for densitometric analysis of GRK2 activity after RNAi treatment

Dr. Malhotra has entered into a Voluntary Settlement Agreement with ORI, in which he voluntarily agreed to the administrative actions set forth below:

(1) Respondent agreed that he had no intention in applying for or engaging in U.S. Public Health Service (PHS)-supported research or otherwise working with PHS. However, if within five (5) years of the effective date of the Agreement (May 6, 2016), Respondent receives or applies for PHS support, Respondent agreed to have his research supervised for a period of ten (10) years beginning on the date of his employment in a position in which he receives or applies for PHS support and to notify his employer/institution(s) of the terms of this supervision.

(2) Respondent certified that he is not currently engaged in or receiving PHS support. Respondent agreed that prior to the submission of an application for PHS support for a research project on which the Respondent's participation is proposed and prior to the Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of Respondent's duties is submitted to ORI for approval. The supervision plan must be designed to ensure the scientific integrity of Respondent's research contribution as outlined below. Respondent agreed that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI. Respondent agreed to maintain responsibility for compliance with the agreed upon supervision plan.

(3) The requirements for Respondent's supervision plan are as follows:

i. A committee of senior faculty members and officials at the institution who are familiar with Respondent's field of research, but not including Respondent's supervisor or collaborators, will provide oversight and guidance for ten (10) years. The committee will review primary data for Respondent's PHS-supported research on a quarterly basis setting forth the committee meeting dates, Respondent's compliance with appropriate research standards, and confirming the integrity of Respondent's research.

ii. The committee will conduct an advance review of any PHS grant application (including supplements, resubmissions, etc.), manuscripts reporting PHS-funded research submitted for publication, and abstracts. The review will include a discussion with Respondent of the primary data represented in those documents and will include a certification that the data presented in the proposed application/publication is supported by the research record.

(4) If within five (5) years from the effective date of the Agreement, Respondent receives or applies for PHS support, Respondent agreed that for a period of ten (10) years beginning on the date of his employment that any institution employing him shall submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a report and certification to ORI at six (6) month intervals that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract.

(5) If no supervisory plan is provided to ORI, Respondent agreed to provide certification to ORI on a quarterly basis for a period of five (5) years, beginning on May 6, 2016, that he has not engaged in, applied for, or had his name included on any application, proposal, or other request for PHS funds made available through grants, subgrants, cooperative agreements, contracts, subcontracts, supplements, awards, fellowships, projects, programs, small business technology transfer (STTR) and small business innovation research (SBIR) programs, conferences, meetings, centers, resources, studies, and trials, without prior notification to ORI.

(6) Respondent agreed to exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of five (5) years, beginning on May 6, 2016.

(7) As a condition of the Agreement, Respondent agreed to the retraction of *JBC* 2010.

FOR FURTHER INFORMATION CONTACT: Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8200.

Kathryn M. Partin,
Director, Office of Research Integrity.

[FR Doc. 2016–12800 Filed 5–27–16; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

AGENCY: National Committee on Vital and Health Statistics (NCVHS), HHS

ACTION: Notice of full committee and subcommittee meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

DATES: Tuesday, June 14, 2016: 9 a.m.–5:40 p.m.—Full Committee Meeting.

Wednesday, June 15, 2016: 8 a.m.–2:25 p.m.—Full Committee Meeting.

Thursday, June 16, 2016: 8:30 a.m.–5 p.m.—Privacy Subcommittee Meeting on "Minimum Necessary and the Health Insurance Portability and Accountability Act (HIPAA)".

Friday, June 17, 2016: 8:15 a.m.–4 p.m.—NCVHS Meeting on Claims-based Databases for Policy Development and Evaluation.

ADDRESSES: The public meetings on June 14–16, 2016 will be held at the U.S. Department of Health and Human Services, Hubert H. Humphrey Building, Room 705–A, 200 Independence Avenue SW., Washington, DC 20024. The public meeting on June 17, 2016 will be held at the Wilbur J. Cohen Building, 330 Independence Avenue SW, Snow Room, #5051, Washington, DC 20201. Phone: (202) 690–7100.

FOR FURTHER INFORMATION CONTACT: Substantive program information may be obtained from Rebecca Hines, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone (301) 458–4715. Summaries of meetings and a roster of committee members are available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda and information for remote audio access to the meetings will be posted.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

SUPPLEMENTARY INFORMATION:

Status: Open.

Purpose: At the June 14–15, 2016 meeting the Committee will hear presentations and hold discussions on several health data policy topics. The Committee will receive updates from the Department, including from the Office of the National Coordinator and the Centers for Medicare and Medicaid Services. The Committee will discuss and take action on two recommendation letters stemming from the February 16, 2016 Standards Subcommittee hearing on the proposed Phase IV Operating Rules and proposed Attachment Standard. Findings from the June 2015 Review Committee Hearing on Adopted Transaction Standards, Operating Rules, Code Sets and Identifiers also will be discussed. The Committee will review the current public health data landscape with briefings from the National Center for Health Statistics, U.S. Census Bureau and CDC's Center for Surveillance, Epidemiology, and Laboratory Services. CMS will provide a briefing on MACRA and the Merit-Based Incentive Payment System (MIPS). The Committee will further review its strategic plan for 2016 and all Subcommittees will report on work plans and next steps. The Subcommittee on Privacy, Confidentiality, and Security will brief the full Committee on proceedings from the meeting on De-identification and the Health Insurance Portability and Accountability Act (HIPAA) scheduled for May 24–25, 2016, and discuss preliminary findings.

After the plenary session adjourns, the Work Group on HHS Data Access and Use will continue strategic discussions on building a framework for guiding principles for data access and use.

Privacy-specific topics will be addressed during the same week at the following meeting: The NCVHS Privacy, Confidentiality and Security Subcommittee will hold a one day meeting on June 16, 2016 to review the state of implementation of current policies and practices of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Minimum Necessary provisions. The Subcommittee plans to identify and discuss issues and challenges that the industry is facing when addressing this requirement for potential recommendations to the HHS Secretary for policy and practice guidance addressing compliance with the "minimum necessary" standard.

On June 17th the full Committee will hold a meeting to explore the current state of the art associated with the collection and use of Multipayor claims data bases. These data bases include private data bases (sometimes known as Multi-claims Data Bases) and State claims data bases referred to as All-Payer Claims Databases (APCDs). The purpose of this meeting is to highlight the current state of development, challenges, issues, and opportunities faced by these initiatives, engage stakeholders on key issues, and identify priority areas and opportunities for recommendations to the Secretary of HHS and to the industry.

Dated: May 16, 2016.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2016–12160 Filed 5–27–16; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment of the NIH Clinical Center Research Hospital Board

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. App.), the Director, National Institutes of Health (NIH) announces the establishment of the NIH Clinical Center Research Hospital Board (Board) as authorized by 42 U.S.C. 282(b)(16), Section 402(b)(16) of the Public Health Service Act, as amended.

It has been determined that the NH Clinical Center Research Hospital Board is in the public interest in connection with the performance of duties imposed on the National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of the Board.

Inquiries may be directed to Jennifer Spaeth, Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496–2123, or *spaethj@od.nih.gov* .

Dated: May 24, 2016.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12643 Filed 5–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: June 21–22, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Washington/Rockville, Jefferson Room, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Nancy Vazquez-Maldonado, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3F52B National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892–9834, (240) 669–5044, *nvazquez@niaid.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee.

Date: June 22–23, 2016.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 4H100 and 3C100, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities/Room 3G31B, National Institutes of Health, NIAID, 5601 Fishers Lane MSC 9834, Bethesda, MD 20892–9834, (240) 669–5060, *james.snyder@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: June 27–29, 2016.

Time: June 27, 2016, 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Washington/Rockville, Jefferson Room, 1750 Rockville Pike, Rockville, MD 20852.

Time: June 28, 2016, 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Washington/Rockville, Jefferson Room, 1750 Rockville Pike, Rockville, MD 20852.

Time: June 29, 2016, 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Washington/Rockville, Jefferson Room, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Nancy Vazquez-Maldonado, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3F52B National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892–9834, (240) 669–5044, *nvazquez@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: May 24, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12649 Filed 5–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Development of a Biosensor-Based Core Needle Tumor Biopsy Device.

Date: June 2, 2016.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove 9609 Medical Center Drive, Room 2W030, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Kenneth L. Bielat, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W244, Rockville, MD 20892–9750, 240–276–6373, *bielatk@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: May 24, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12662 Filed 5–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB review; 30-day Comment Request;

Request for Human Embryonic Stem Cell Line To Be Approved for Use in NIH Funded Research (OD)

SUMMARY: In compliance with the requirement of Section 3507(a) (1) (D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection instrument listed below. This proposed information collection was previously published in the **Federal Register** on March 25, 2016, page 16190 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Dr. Ellen Gadbois, Office of Science Policy, Office of the Director, NIH, Building 1, Room 218, MSC 0166, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 496–9838 or Email your request, including your address to: *gadboisel@od.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Request for Human Embryonic Stem Cell Line to be approved for Use in NIH Funded Research. OMB No. 0925–0601-Expiration Date 5/31/2016—Extension-Office of Extramural Research (OER), National Institutes of Health (NIH).

Need and Use of Information Collection: The form is used by applicants to request that human embryonic stem cell lines be approved for use in NIH funded research. Applicants may submit applications at any time.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2,550.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
NIH grantees and others with hESC lines	50	3	17	2,550
Total	50	150		2,550

Dated: May 24, 2016.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2016–12726 Filed 5–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended

(5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Synthesis and Distribution of Opioid and Related Peptides (7795).

Date: June 28, 2016.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 435–1439, *lf33c.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Non-Clinical ADME Studies (8931).

Date: July 13, 2016.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 435–1439, *lf33c.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS).

Dated: May 24, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12647 Filed 5–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: CVRS New Investigator.

Date: June 22, 2016.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, (301435–1743, *margaret.chandler@nih.gov.*

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Enabling Bioanalytical and Imaging Technologies Study Section.

Date: June 23–24, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301–435–0229, *kenneth.ryan@nih.hhs.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group;Cancer Immunopathology and Immunotherapy Study Section.

Date: June 23–24, 2016.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Embassy Row Hotel, 2015 Massachusetts Avenue NW., Washington, DC 20036.

Contact Person: Denise R. Shaw, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, *shawdeni@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Review of Neuroscience AREA Grant Applications.

Date: June 23–24, 2016.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree by Hilton, 1515 Rhode Island Avenue NW., Washington, DC 20005.

Contact Person: Richard D. Crosland, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, 301–435–1220, *crosland@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomedical Sensing, Measurement and Instrumentation.

Date: June 24, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Inna Gorshkova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1784, *gorshkoi@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Biophysics of Neural Systems Study Section.

Date: June 27–28, 2016.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Geoffrey G Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Cognition and Perception Study Section.

Date: June 27–28, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Mark D Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301–915–6298, *lindnermd@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Bacterial Pathogenesis Study Section.

Date: June 27, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Alexandria Old Town/Duke Street, 1456 Duke Street, Alexandria, VA 22314.

Contact Person: Marci Scidmore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–435–1149, *marci.scidmore@nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Drug Discovery for the Nervous System Study Section.

Date: June 27–28, 2016.

Time: 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, 1515 Rhode Island Avenue NW., Washington, DC 20005.

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Developmental Therapeutics Study Section.

Date: June 27–28, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Sharon K. Gubanich, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 408–9512, *gubanics@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Therapeutic Approaches to Genetic Diseases Study Section.

Date: June 27–28, 2016.

Time: 8:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Richard Panniers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1741, *pannierr@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function A Study Section.

Date: June 27–28, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7760, Bethesda, MD 20892, (301) 404–7419, *rosenzweign@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 24, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12642 Filed 5–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Heart, Lung, and Blood Program Project Review Committee, June 17, 2016, 08:00 a.m. to June 17, 2016, 01:00 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on May 24, 2016, 81FR32763–32764.

The meeting notice is amended to change the location of the meeting from The Hyatt Regency Bethesda to The Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD, 20817. The meeting is closed to the public.

Dated: May 24, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12645 Filed 5–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; DSR Member Conflict SEP.

Date: June 28, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Latarsha J. Carithers, Ph.D., Program Director, Division of Extramural Activities, NIDCR, 6701 Democracy Boulevard, Suite 672, Bethesda, MD 20892, 301–594–4859, *latarsha.carithers@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS).

Dated: May 24, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12650 Filed 5–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel; R01/R13/R21/K01/K99/F31 Conflicts.

Date: July 21, 2016.

Time: 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Zoe E. Huang, MD, Scientific Review Officer, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: May 24, 2016.

Michelle Trout,

Program Analyst, Office of the Federal Advisory Committee Policy.

[FR Doc. 2016–12648 Filed 5–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Patient-Oriented Research Review Committee.

Date: June 23–24, 2016.

Time: 8:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington National Airport, (Between 15th Street and Crystal Drive), 1480 Crystal Drive, Arlington, VA 22202.

Contact Person: Stephanie Johnson Webb, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–435–0291, *stephanie.webb@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 24, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12644 Filed 5–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Services Planning Research in the Appalachian Region to Address Adverse Health Consequences Associated with Increased Opioid Injection Drug Use (R03).

Date: June 24, 2016.

Time: 11:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–402–6020, *hiromi.ono@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIH Pathway to Independence Award (K99/R00).

Date: June 30, 2016.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Susan O. McGuire, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Blvd., Room 4245, Rockville, MD 20852, 301–435–1426, *mcguireso@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 24, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12646 Filed 5–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Certain Network Cables and Transceivers

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued a final determination concerning the country of origin of certain network cables and transceivers. Based upon the facts presented, CBP has concluded that the country of origin of the network cables and transceivers is China for purposes of U.S. Government procurement.

DATES: The final determination was issued on May 19, 2016. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within June 30, 2016.

FOR FURTHER INFORMATION CONTACT: Grace A. Kim, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202) 325–7941.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on May 19, 2016, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain network cables and transceivers, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H273091, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that the processing in the U.S. does not result in a substantial transformation. Therefore, the country of origin of the certain network cables and transceivers is China for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: May 19, 2016.

Myles B. Harmon,

Acting Executive Director, Regulations and Rulings, Office of International Trade.

HQ H258960

OT:RR:CTF:VS H258960 GaK

CATEGORY: Origin

Mr. Stuart P. Seidel
Baker & McKenzie, LLP
815 Connecticut Ave. NW
Washington, DC 20006–4078
RE: U.S. Government Procurement; Country of Origin Marking; Network Transceivers and High Speed Cabling Devices; Substantial Transformation
Dear Mr. Seidel:

This is in response to your letter dated October 24, 2014, requesting a final determination on behalf of AddOn Computer Peripherals LLC ("AddOn") pursuant to Subpart B of Part 177 of the U.S. Customs & Border Protection ("CBP") Regulations (19 CFR part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 ("TAA"), as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or for products offered for sale to the U.S. Government. This final determination concerns the country of origin of AddOn's network transceivers and high speed cabling devices. As a U.S. importer, AddOn is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination. You also request a country of origin marking determination.

In your letter, you requested confidential treatment for certain information contained in the file. Pursuant to 19 CFR 177.2(b)(7), the identified information has been bracketed and will be redacted in the public version of this final determination.

FACTS:

The products at issue are network transceivers and high speed cabling devices. You state that network transceivers are used for transmitting and receiving information between two network devices. The medium of transmission is usually copper or fiber optic cables and you claim that AddOn's network transceivers can work with one or the other. There are different models of transceivers based on the technology employed for a particular network device, transmission medium, speed and/or distance. Depending on the original equipment manufacturer ("OEM"), technology, and applications, the sales price for the transceivers range from [*******] to [*******]. You claim that the difference in cost and the sales price is attributable to the software program and subsequent testing and quality assurance process. The transceiver also "hot plugs," which means that it can be plugged into a network device while the transceiver is working, and connect that device to a network.

You state that most transceivers are built to a Multi-Source Agreement ("MSA") standard to provide common formats and functions to ensure that transceivers can operate with systems and each other. The MSA standard is said to incorporate a programmable memory, called an EEPROM. The EEPROM can also be used to tell the transceiver to enable functionality that goes beyond the MSA standard, which can be unique to the network device manufacturer. You claim that sometimes the EEPROM is programmed to allow the transceiver to perform a proprietary handshake and be identified as capable of certain advanced features. You further claim that if the transceiver fails the proprietary handshake, it may be rendered inoperable. You state that AddOn's transceivers conform to the MSA standard and to the OEM's higher level of compatibility.

You provided two scenarios in transceiver production. In both scenarios, the hardware components are manufactured in China or other Asian country. In Scenario 1, AddOn purchases the "blank" transceivers from an unrelated supplier in China or other Asian country. You state that "blank" transceivers are just hardware without any programming. AddOn downloads its proprietary software, which was developed in the U.S. and you claim that this makes the transceivers functional. This scenario applies to over 95% of the imported transceivers. In Scenario 2, AddOn purchases transceivers that have already been programmed with a generic program, which is removed and AddOn's proprietary software is installed to provide interoperability between different OEMs' systems. AddOn's transceivers are then tested for compatibility in its Certification Test Lab. In both scenarios, the programming and testing are conducted in the U.S.

The second product is a high speed cabling device, which comprises two transceivers and a transmission medium (copper or fiber optic cable) in one integrated part. All programming and testing are said to be the same as the transceivers, except that AddOn programs and tests two transceivers instead of one for each product.

AddOn's proprietary operational firmware/software was developed and programmed in the U.S. You state that the amount of time invested in development was approximately [*******] hours and the software developers have a Bachelors of Science or better or equivalent work experience. You also state that the dollar value increases significantly after programming, which ranges from [*******] depending on the part type, application and customer.

ISSUE:

What is the country of origin of the network transceivers and high speed cabling devices for purposes of U.S. government procurement and marking?

LAW AND ANALYSIS:

Government Procurement

Pursuant to Subpart B of Part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B):

> An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. government procurement, CBP applies the provisions of subpart B of part 177 consistent with the Federal Acquisition Regulations. *See* 19 CFR 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1). The Federal Acquisition Regulations define "U.S.-made end product" as:

> . . .an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

48 CFR 25.003.

In *Data General* v. *United States,* 4 Ct. Int'l Trade 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign PROM (Programmable Read-Only Memory chip) in the United States substantially transformed the PROM into a U.S. article. In programming the imported PROMs, the U.S. engineers systematically caused various distinct electronic interconnections to be formed within each integrated circuit. The programming bestowed upon each circuit its electronic function, that is, its "memory" which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, could be discerned by electronic testing of the PROM. The court noted that the programs were designed by a U.S. project engineer with many years of experience in "designing and building hardware." In addition, the court noted that while replicating the program pattern from a "master" PROM may be a quick one-step process, the development of the pattern and the production of the "master" PROM required much time and expertise. The court noted that it was undisputed that programming altered the character of a PROM. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device, possessing a desired distinctive circuit pattern, was no less a "substantial transformation" than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

In *Texas Instruments* v. *United States,* 681 F.2d 778, 782 (CCPA 1982), the court observed that the substantial transformation issue is a "mixed question of technology and customs law."

In C.S.D. 84–85, 18 Cust. B. & Dec. 1044, CBP stated:

> We are of the opinion that the rationale of the court in the Data General case may be applied in the present case to support the principle that the essence of an integrated circuit memory storage device is established by programming; . . . [W]e are of the opinion that the programming (or reprogramming) of an EPROM results in a new and different article of commerce which would be considered to be a product of the country where the programming or reprogramming takes place.

Accordingly, the programming of a device that confers its identity as well as defines its use generally constitutes substantial transformation. *See also* Headquarters Ruling Letter ("HQ") 558868, dated February 23, 1995 (programming of SecureID Card substantially transformed the card because it gave the card its character and use as part of a security system and the programming was a permanent change that could not be undone); HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with instructions that allowed it to perform certain functions that prevented piracy of software constituted substantial transformation); and, HQ 733085, dated July 13, 1990; *but see* HQ 732870, dated March 19, 1990 (formatting a blank diskette did not constitute substantial transformation because it did not add value, did not involve complex or highly technical operations and did not create a new or different product); and, HQ 734518, dated June 28, 1993, (motherboards were not substantially transformed by the implanting of the central processing unit on the board because, whereas in *Data General* use was being assigned to the PROM, the use of the motherboard had already been determined when the importer imported it).

In this case, the hardware components of the transceivers in both scenarios are wholly manufactured in a foreign country and imported into the U.S. In Scenario 1, the transceivers are "blanks", and in Scenario 2, the transceivers are preprogrammed with a generic program. In both scenarios, AddOn will download its proprietary software onto the transceivers which will transform them into a proprietary network device capable of performing its intended functions. You argue that in both scenarios, the imported hardware is substantially transformed by the development, configuration, and download operations of the U.S. origin software. In Scenario 1, you argue that the completely non-functional hardware is transformed into a transceiver and in Scenario 2, you argue that the hardware with generic software is substantially transformed into a fully functional network device that is capable of performing their intended functions. You also state that the expenses for the work performed in the U.S. far outweigh the work performed abroad. In support of your argument, you cite to HQ 562964, dated March 29, 2004; HQ H034843, dated May 5, 2009; and HQ H175415, dated October 4, 2011.

In HQ 562964, CBP considered certain network tape drive units and its components, including "bare bones" (basic) tape drives, imported into Country X where the components were assembled into a Small Computer System Interface ("SCSI") tape drive rack unit. The assembly process involved approximately eight major components, simple operations, and required approximately twenty minutes. In Scenario 1, the "bare bones" tape drives were preprogrammed with the

OEM's firmware prior to importation, which allowed the tape drives to be recognized and controlled by the OEM's network. CBP found that the assembly operations did not alter the function of the tape drive, and that its character and use as a network storage device was defined prior to importation into Country X, and therefore the tape drive rack unit was not substantially transformed. In Scenario 2, the "bare bones" tape drives were imported with a universal firmware that was installed only for testing and diagnostic purposes and the OEM proprietary firmware was burned onto the tape drives in Country X. CBP found that the OEM firmware allowed the tape drives to be recognized and controlled by the OEM's network and defined the character and use of the tape drive as a network storage device and concluded that the tape drive rack unit had been substantially transformed.

In HQ H034843, CBP held that USB flash drives were products of Israel because, though the assembly process began in China and the software and firmware were developed in Israel, the installation and customization of the firmware and software that took place in Israel made the USB flash drives functional, permitted them to execute their security features, and increased their value. In HQ H175415, CBP held that Ethernet switches were products of the U.S. because, though the hardware components were fully assembled into Ethernet switches in China, they were programmed with U.S.-origin operating software enabling them to interact and route within the network, and to monitor, secure, and access control of the network.

However, in HQ H241177, dated December 3, 2013, Ethernet switches were assembled to completion in Malaysia and then shipped to Singapore, where U.S.-origin software was downloaded onto the switches. CBP further found that software downloading did not amount to programming, which involved writing, testing and implementing code necessary to make the computer function a certain way. *See also* HQ H240199, dated March 10, 2015 (the notebook computer was not substantially transformed when the computer was assembled in Country A, imported into Country F, and Country D-origin BIOS was downloaded). CBP concluded in HQ H241177, that the software downloading performed in Singapore did not amount to programming and that the country of origin was Malaysia, where the last substantial transformation occurred.

In Scenario 1, the imported transceivers are completely non-functional and AddOn's proprietary software is downloaded in the U.S., making the transceivers functional and compatible with the OEM technology. The proprietary software was developed in the U.S. at significant cost to AddOn over many years. Without the proprietary software, the transceivers could not function as a network device in any capacity. In accordance with HQ H175415, we find that the non-functional transceivers are substantially transformed as a result of downloading performed in the U.S., with proprietary software developed in the U.S. Therefore, the country of origin of the transceivers in Scenario 1 is the U.S.

In Scenario 2, the imported transceivers are preprogrammed with a generic program prior to importation, which is replaced with the proprietary software in the U.S. While the transceivers have generic network functionality, it is stated that they will not be recognized by or work on proprietary networks. As HQ 732870 and HQ 734518 point out, when programming does not actually create a new or different product, it may not constitute a substantial transformation. Given these considerations, it would appear that programming an imported, already functional, transceiver just to customize its network compatibility, would not actually change the identity of the imported transceiver. *See* HQ H241177 *supra*. Also, in HQ 562964, CBP found that the "bare bones" tape drives were substantially transformed when the universal firmware was replaced with the proprietary firmware because the universal firmware was only for testing and diagnostic purposes. In this case, while the preprogrammed transceivers cannot function as intended by AddOn's market and its customers, the transceivers are capable of generic network functionality at the time of importation. Downloading the AddOn proprietary software does not actually change the identity of the imported transceiver and its name, character, and use remain the same. Therefore, in Scenario 2, we find that the imported transceivers with a generic program will not be substantially transformed in the U.S. Therefore, we find that the country where the last substantial transformation occurs is China or other Asian country where the hardware components are manufactured. The country of origin of the transceivers in Scenario 2 is China or other Asian country.

Marking

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

Part 134, CBP Regulations (19 CFR part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Section 134.1(b), CBP Regulations (19 CFR 134.1(b)), defines the country of origin of an article as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the country of origin for country of origin marking purposes.

Thus, the issue in determining the country of origin of the transceivers is whether the transceivers of Chinese (or other Asian country) origin are substantially transformed as a result of the operations performed in the U.S. As indicated above, in Scenario 1, we have found that the Chinese (or other Asian country) origin transceivers are substantially transformed in the U.S., but not in Scenario 2. Therefore, pursuant to 19 U.S.C. 1304, the country of origin for marking purposes of the transceivers is the U.S. in Scenario 1, and China or other Asian country in Scenario 2.

HOLDING:

Based on the facts of this case, the country of origin of transceivers and high speed cabling devices is the U.S. in Scenario 1, and China or other Asian country in Scenario 2 for purposes of U.S. Government procurement and country of origin marking.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Myles B. Harmon

Acting Executive Director

Regulations and Rulings

Office of International Trade

[FR Doc. 2016–12798 Filed 5–27–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2013–0067]

Sector Outreach and Programs Division Online Meeting Registration Tool

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-day notice and request for comments; Renewal Information Collection Request: 1670–0019.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Sector Outreach and Programs Division (SOPD), will submit the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until August 1, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to DHS/NPPD/IP/SOPD, 245 Murray Lane SW., Mail Stop 0608, Arlington, VA 20598–0640. Emailed requests should go to Michael Bowen, *michael.bowen@hq.dhs.gov*. Written comments should reach the contact person listed no later than August 1, 2016. Comments must be identified by "DHS–2013–0067" and may be submitted by *one* of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov.

- *Email:* Include the docket number in the subject line of the message.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

SUPPLEMENTARY INFORMATION: On behalf of DHS, NPPD/IP manages the Department's program to protect the Nation's 16 critical infrastructure sectors by implementing the National Infrastructure Protection Plan (NIPP) 2013, Partnering for Critical Infrastructure Security and Resilience. Under Presidential Policy Directive 21 on *Critical Infrastructure Security and Resilience* (February 2013), each sector is assigned a Sector-Specific Agency (SSA) to oversee Federal interaction with the array of sector security partners, both public and private. SSAs are responsible for leading unified public-private sector efforts to develop, coordinate, and implement a comprehensive physical, human, and cybersecurity strategy for its assigned sector. The Sector Outreach and Programs Division executes the SSA responsibilities for the six critical infrastructure sectors assigned to IP: Chemical; Commercial Facilities; Critical Manufacturing; Dams; Emergency Services; and Nuclear Reactors, Materials, and Waste.

The mission of SOPD is to enhance the resiliency of the Nation by leading the unified public-private sector effort to ensure its assigned critical infrastructure is prepared, secure, and safe from terrorist attacks, natural disasters, and other incidents. To achieve this mission, SOPD leverages the resources and knowledge of its critical infrastructure sectors to develop and apply security initiatives that result in significant benefits to the Nation.

Each SOPD branch builds sustainable partnerships with its public and private sector stakeholders to enable more effective sector coordination, information sharing, and program development and implementation. These partnerships are sustained through the Sector Partnership Model, described in the NIPP 2013, pages 10–12.

Information sharing is a key component of the NIPP Partnership Model, and DHS-sponsored conferences are one mechanism for information sharing. To facilitate conference planning and organization, SOPD established an event registration tool for use by all of its branches. The information collection is voluntary and is used by the SSAs within the SOPD. The six SSAs within SOPD use this information to register public and private sector stakeholders for meetings hosted by the SSA. The Sector Outreach and Programs Division will use the information collected to reserve space at a meeting for the registrant, contact the registrant with a reminder about the event, develop meeting materials for attendees, determine key topics of interest, and efficiently generate attendee and speaker nametags. Additionally, it will allow SOPD to have a better understanding of the organizations participating in the critical infrastructure protection partnership events. By understanding who is participating, the SSA can identify portions of a sector that are underrepresented, and the SSA could then target that underrepresented sector element through outreach and awareness initiatives.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Sector Outreach and Programs Division.

Title: Sector Outreach and Programs Division Online Meeting Registration Tool.

OMB Number: 1670–0019.

Frequency: Annually.

Affected Public: Federal, State, local, tribal, and territorial government personnel; private sector members.

Number of Respondents: 3,000 respondents (estimate).

Estimated Time per Respondent: 3 minutes.

Total Burden Hours: 150 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $34,416.

Dated: May 24, 2016.

David Epperson,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2016–12678 Filed 5–27–16; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2016–0028]

Homeland Security Science and Technology Advisory Committee

AGENCY: Science and Technology Directorate, DHS.

ACTION: Committee management; notice of federal advisory committee meeting.

SUMMARY: The Homeland Security Science and Technology Advisory Committee (HSSTAC) will meet on June 21–22, 2016 in Washington, DC. The meeting will be an open session with both in-person and webinar participation.

DATES: The HSSTAC will meet in-person Tuesday, June 21, 2016, from 9:00 a.m.–4:25 p.m. and Wednesday, June 22, 2016, from 9:00 a.m.–3:00 p.m.

Due to security requirements, screening pre-registration is required for this event. Please see the "REGISTRATION" section below.

The meeting may close early if the committee has completed its business.

ADDRESSES: Schafer Government Services, Homeland Security, 1125 15th St. NW., Suite 500, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Bishop Garrison, HSSTAC Executive Director, S&T IAO STOP 0205, Department of Homeland Security, 245 Murray Lane, Washington, DC 20528–0205, 202–254–5617(Office), 202–254–6176 (Fax) *bishop.garrison@hq.dhs.gov* (Email).

SUPPLEMENTARY INFORMATION:

I. Background

Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. appendix (Pub. L. 92–463). The committee addresses areas of interest and importance to the Under Secretary for Science and Technology (S&T), such as new developments in systems engineering, cyber-security, knowledge management and how best to leverage related technologies funded by other Federal agencies and by the private sector. It also advises the Under Secretary on policies, management processes, and organizational constructs as needed.

II. Registration

To pre-register for the virtual meeting (webinar) please send an email to: *hsstac@hq.dhs.gov.* The email should include the name(s), title, organization/affiliation, email address, and telephone number of those interested in attending. For information on services for individuals with disabilities or to request special assistance at the meeting, please contact Bishop Garrison as soon as possible.

If you plan to attend the meeting in-person you must RSVP by June 17, 2016. To register, email *hsstac@hq.dhs.gov* with the following subject line: RSVP to HSSTAC Meeting. The email should include the name(s), title, organization/affiliation, email address, and telephone number of those interested in attending.

III. Public Comment

At the end of each open session, there will be a period for oral statements. Please note that the oral statement period may end before the time indicated, following the last call for oral statements. To register as a speaker, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

To facilitate public participation, we invite public comment on the issues to be considered by the committee as listed in the "Agenda" below. Written comments must be received by June 6, 2016. Please include the docket number (DHS–2016–0028) and submit via *one* of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Email: *hsstac@hq.dhs.gov.* Include the docket number in the subject line of the message.
- Fax: 202–254–6176.
- Mail: Bishop Garrison, HSSTAC Executive Director, S&T IAO STOP 0205, Department of Homeland Security, 245 Murray Lane, Washington, DC 20528–0205.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number. Comments received will be posted without alteration at *http://www.regulations.gov.*

Docket: For access to the docket to read the background documents or comments received by the HSSTAC, go to *http://www.regulations.gov* and enter the docket number into the search function: DHS–2016–0028.

Agenda: Day 1: The morning session will cover the HSSTAC deliverables, specifically a white paper discussion on Interdisciplinary Centers of Excellence and an outbrief on the Social Media Working Group Subcommittee, which focuses on social media technologies for first responders. Comments and questions from the public will follow the first session. The second morning session will be a discussion led by Dr. Reginald Brothers on "How to reinvigorate traditional partners while building the innovation ecosystem." Committee members will be asked to provide feedback on the right balance for an innovation ecosystem. The afternoon session will consist of discussions on innovation and private sector outreach. Topics will include: The innovation ecosystem, the future of innovation at the National Bio and Agro-Defense Facility (NBAF), innovation and public private sector outreach, defining instruments of innovation and the innovation ecosystem, best practices for public private partnerships on engagement with an innovation hub and return on investment (ROI). There will also be a briefing on the status of the Silicon Valley Office, followed by a discussion on where DHS S&T should focus in building the innovation ecosystem. Members will be asked to provide input on how DHS S&T can create a national model for innovation rather than regional models. Dr. Brothers will adjourn the meeting with a few closing remarks. *Day 2:* The morning session will begin with a briefing on the Quadrennial Homeland Security Review (QHSR). The afternoon session will include a continuation of the discussion where the members will be asked to provide feedback on the QHSR process. There will be a period for public comment followed by final comments on QHSR.

Dated: May, 24, 2016.

Bishop Garrison,

Executive Director, Homeland Security Science and Technology Advisory Committee.

[FR Doc. 2016–12679 Filed 5–27–16; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–38]

30-Day Notice of Proposed Information Collection: Office of Hospital Facilities Transactional Forms for FHA Programs 242, 241, 223(f), 223(a)(7)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date: June 30, 2016.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*

FOR FURTHER INFORMATION CONTACT: Paul Giaudrone, Underwriting Director, Office of Hospital Facilities, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 2247, Washington, DC 20410–0500; email: *paul.giaudrone@hud.gov;* telephone number 202–708–0599 (this is not a toll-free number). Persons with hearing or speech disabilities may access this number through TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

The documents that are the subject of this notice can be viewed on HUD's Web site: *http://portal.hud.gov/hudportal/HUD?src=/federal_housing_administration/healthcare_facilities/section_242/additional_resources/242_redlines_0815.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 9, 2015 at 80 FR 61225.

A. Overview of Information Collection

Title of Information Collection: Office of Hospital Facilities Transactional Forms for FHA Programs 242, 241, 223(f), 223(a)(7).

OMB Approval Number: 2502–0602.

Type of Request: Revision of currently approved collection.

Form Number: HUD–91070–OHF, HUD–91071–OHF, HUD–91073–OHF, HUD–91111–OHF, HUD–91725–OHF, HUD–92013–OHF, HUD–92023–OHF, HUD–92070–OHF, HUD–92080–OHF, HUD–92117–OHF, HUD–92205–OHF, HUD–92223–OHF, HUD–92322–OHF, HUD–92330–OHF, HUD–92330A–OHF, HUD–92403–OHF, HUD–92403A–OHF, HUD–92415–OHF, HUD–92422–OHF, HUD–92434–OHF, HUD–92441–OHF, HUD–92442–OHF, HUD–92448–OHF, HUD–92452–OHF, HUD–92452A–OHF, HUD–92455–OHF, HUD–92456–OHF, HUD–92464–OHF, HUD–92466–OHF, HUD–92476–OHF, HUD–92476A–OHF, HUD–92479–OHF, HUD–9250–OHF, HUD–92554–OHF, HUD–92576–OHF, HUD–93305–OHF, HUD–94000–OHF, HUD–94001–OHF, HUD–94128–OHF

Description of the need for the information and proposed use: The included collection comprises the comprehensive documents necessary for the application, review, commitment, administration, technical oversight, audit and initial/final endorsement of Office of Hospital Facilities projects pursuant to FHA Programs 242, 241, 223(f), and 223(a)(7). The collection corrects, revises, updates, and supersedes the previous collection approved in February 2014.

Respondents (*i.e.* affected public): Borrowers, lenders, contractors, architects, and engineers that participate in the application, procedure, project administration and initial/final endorsement of FHA hospital mortgage insurance projects.

Estimated Number of Respondents: 506.

Estimated Number of Responses: 1,080.

Frequency of Response: 68.

Average Hours per Response: 122.

Total Estimated Burdens: $5,531,419.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: May 24, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–12731 Filed 5–27–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/A0A501010.999900]

Renewal of Agency Information Collection for Appointed Counsel in Involuntary Indian Child Custody Proceedings in State Courts

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA has submitted to the Office of Management and Budget (OMB) a request for renewal of the collection of information for the collection of information for Appointed Counsel in Involuntary Indian Child Custody Proceedings in State Courts authorized by OMB Control Number 1076–0111. This information collection expires June 30, 2016.

DATES: Interested persons are invited to submit comments on or before June 30, 2016.

ADDRESSES: Please submit your comments to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an email to: *OIRA_Submission@omb.eop.gov.* Also please send a copy of your comments to Ms. Evangeline Campbell, 1849 C Street NW., Mail Stop 4513, Washington, DC 20240; fax: (202) 513–208–5113; email: *Evangeline.Campbell@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Evangeline Campbell, (202) 513–7621, or Ms. Debra Burton, (202) 513–7610. You may review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

The BIA is seeking renewal of the approval for the information collection conducted under 25 CFR 23.13, implementing the Indian Child Welfare Act (25 U.S.C. 1901 *et seq.*). The information collection allows BIA to receive written requests by State courts that appoint counsel for an indigent Indian parent or Indian custodian in an involuntary Indian child custody proceeding when appointment of counsel is not authorized by State law. The applicable BIA Regional Director uses this information to decide whether to certify that the client in the notice is eligible to have his counsel compensated by the BIA in accordance with the Indian Child Welfare Act.

II. Request for Comments

The BIA requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personally identifiable information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0111.

Title: Payment for Appointed Counsel in Involuntary Indian Child Custody Proceedings in State Courts, 25 CFR 23.13.

Brief Description of Collection: This information is required in order for States to receive payment for counsel appointed to indigent Indian parents or custodians in involuntary child custody proceedings under 25 CFR 23.13. The information is collected to determine applicant eligibility for services.

Type of Review: Extension without change of currently approved collection.

Respondents: State courts.

Number of Respondents: Two per year.

Estimated Time per Response: Two hours for reporting and one hour for recordkeeping.

Frequency of Response: Once, on occasion.

Obligation to Respond: Response required to obtain a benefit.

Estimated Time Per Response: Three hours.

Estimated Total Annual Hour Burden: Six hours.

Estimated Total Non-Hour Annual Cost: $0.

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2016–12680 Filed 5–27–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Bureau of Safety and Environmental Enforcement

[16761700D2 ET1EX0000.PEB000 EEAA000000]

Notice of Availability: Well Stimulation Treatments on the Pacific Outer Continental Shelf

AGENCY: Bureau of Ocean Energy Management (BOEM), and Bureau of Safety and Environmental Enforcement (BSEE), Interior.

ACTION: Notice of availability.

SUMMARY: BOEM and BSEE are announcing the availability of a Programmatic Environmental Assessment (PEA) and Finding of No Significant Impact (FONSI) for well stimulation treatments (WSTs) on the Pacific Outer Continental Shelf (OCS). This Notice of Availability (NOA) is published pursuant to implement the provisions of the National Environmental Policy Act (NEPA) of 1969, as amended. The PEA evaluates potential environmental effects of WSTs on the Pacific OCS. These activities include: fracturing WSTs (diagnostic fracture injection tests; hydraulic fracturing (*e.g.,* frac pacs); and acid fracturing) and non-fracturing WSTs (matrix acidizing and polymer/surfactant injection). BOEM and BSEE are also issuing a FONSI supported by the analysis in the PEA. The FONSI concludes that the reasonably foreseeable environmental impacts associated with the proposed action and alternatives, as set forth in the PEA, would not significantly impact the quality of the human environment; therefore, the preparation of an Environmental Impact Statement is not required.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Yarde, Regional Supervisor, Office of the Environment, Pacific Region BOEM, (805) 384–6379 or Mr. David Fish, Acting Chief Environmental Compliance Division BSEE, (202) 208–3599.

SUPPLEMENTARY INFORMATION: In February 2016, BOEM and BSEE released for public review and comment a draft PEA to evaluate potential environmental effects of WSTs on the Pacific OCS. A notice of availability was published on February 22, 2016, to announce the availability of the draft PEA and initiate a 30-day comment period. A comment and response appendix has been added to the final PEA, and where appropriate the analysis in the final PEA was clarified or revised based on comments received during the comment period.

To obtain a copy of the PEA and FONSI:

1. You may download or view the documents on the following Web site: *http://pocswellstim.evs.anl.gov.*

2. You may obtain a hard copy of the documents by contacting either Mr. Rick Yarde or Mr. David Fish.

Dated: May 24, 2016.

Amanda C. Leiter,

Deputy Assistant Secretary—Land and Minerals Management.

[FR Doc. 2016–12718 Filed 5–27–16; 8:45 am]

BILLING CODE 4310–VH–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–952]

Certain Electronic Devices, Including Wireless Communication Devices, Computers, Tablet Computers, Digital Media Players, and Cameras; Commission Determination to Affirm an Initial Determination Granting a Joint Motion to Terminate the Investigation on the Basis of Settlement; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm the administrative law judge's (ALJ) initial determination (ID) (Order No. 52) granting a joint motion to terminate the above-referenced investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, (202) 205–3427. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On April 3, 2015, the Commission instituted this investigation (the 952 investigation) based on a complaint filed by Ericsson Inc. of Plano, Texas and Telefonaktiebolaget LM Ericsson of Sweden (collectively, "Ericsson"). 80 FR 18254 (Apr. 3, 2015). The complaint alleged violations of 19 U.S.C. 1337 (Section 337) based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices, including wireless communication devices, computers, tablet computers, digital media players, and cameras by reason of infringement of certain claims of U.S. Patent Nos. 6,633,550; 6,157,620; 6,029,052; 8,812,059; 6,291,966; and 6,122,263. *Id.* at 18255. The Commission's Notice of Investigation named Apple Inc. of Cupertino, California (Apple) as respondent and also named the Office of Unfair Import Investigations (OUII) as a party. *Id.*

On December 29, 2015, Ericsson and Apple (collectively, the private parties) filed a joint motion to terminate the investigation pursuant to Commission Rule 210.21(b) on the basis of a settlement. *See* Order No. 51 at 1 (Jan. 12, 2016). On January 12, the ALJ (Judge Shaw) denied the motion because the private parties failed to provide a copy of the Agreement. *See id.* On February 1, 2016, the private parties filed a second amended joint motion (the Joint Motion) to terminate the investigation in view of a settlement agreement. *See* Order 52 at 1 (Mar. 9, 2016) [hereinafter, the Subject ID]. The motion included both a confidential, un-redacted and a public, redacted copy of the settlement agreement (the Agreement). *Id.* at 2. The Agreement and a corresponding motion to terminate were also filed in Investigation No. 337–TA–953 (the 953 investigation). *Id.*

On February 3, 2016, the ALJ presiding in the 953 investigation (Judge Lord) denied the motion to terminate that investigation, reasoning that the public version of the Agreement was over-redacted. *See id.* Pursuant to Commission Rules 210.24(b)(2)–(3) and 210.5(e), Ericsson filed a petition for interlocutory Commission review of only five of Judge Lord's confidentiality determinations. *See* Complainant Ericsson's Application for Commission Review of Certain Confidentiality Determinations in Order No. 45 (Feb. 11, 2016). Ericsson submitted with its appeal a revised, less-redacted public version of the Agreement (the Final Public Version). *Id.*

On March 9, 2016, Judge Shaw issued the Subject ID, which grants the Joint Motion. Subject ID, at 3. The Subject ID concludes that termination of the 952 investigation based on the private parties' settlement is in the public interest. *Id.* at 2. The Subject ID then declares that the private parties should file another public version of the Agreement in accordance with Judge Lord's ruling in the 953 investigation, as affirmed or modified by the Commission. *See id.* at 2–3. No petitions for review of the Subject ID were filed. On April 8, 2016, the Commission determined to review the Subject ID. Notice of Commission Determination to Review an Initial Determination Granting a Joint Motion to Terminate the Investigation on the Basis of Settlement, at 2 (Apr. 8, 2016).

On May 4, 2016, the Commission granted Ericsson's interlocutory appeal in the 953 investigation, reversed the ALJ on all five of the appealed confidentiality determinations, and remanded to the ALJ. Order Granting Appeal for Interlocutory Review of Order No. 45, Upon Review, Reversing, and Remanding to the Administrative Law Judge, at 3 (May 4, 2016).

On May 9, 2016, Ericsson filed with the Commission for purposes of the 952 investigation the Final Public Version. Letter to Secretary Lisa R. Barton enclosing Proposed Public Version of Parties' Global Patent License Agreement for Consideration in the Pending Initial Determination Terminating the Investigation Based on a Settlement Agreement (May 9, 2016).

The Commission hereby affirms the Subject ID, which grants the private parties' motion to terminate the investigation.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 25, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–12711 Filed 5–27–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Rhodes Technologies

AGENCY: Drug Enforcement Administration, DOJ.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before August 1, 2016.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION:

The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control ("Deputy Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on March 26, 2016, Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816 applied to be registered as a bulk manufacturer the following basic classes of controlled substances:

Controlled substance	Schedule
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Methylphenidate (1724)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Morphine (9300)	II
Oripavine (9330)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Tapentadol (9780)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for conversion and sale to dosage form manufacturers.

In reference to drug code 7370 the company plans to bulk manufacture a synthetic tetrahydrocannabinol. No other activity for this drug code is authorized for this registration.

Dated: May 19, 2016.

Louis J. Milione,

Deputy Assistant Administrator.

[FR Doc. 2016–12752 Filed 5–27–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Wildlife Laboratories, Inc.

AGENCY: Drug Enforcement Administration, DOJ.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before June 30, 2016. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before June 30, 2016.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA **Federal Register** Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control ("Deputy Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on February 19, 2016, Wildlife Laboratories, Inc., 1230 W. Ash Street, Suite D, Windsor, Colorado 80550–8055 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Schedule
Etorphine (except HCl) (9056)	I
Etorphine HCl (9059)	II

The company plans to import the listed controlled substances for sale to its customer.

Dated: May 19, 2016.

Louis J. Milione,

Deputy Assistant Administrator.

[FR Doc. 2016–12751 Filed 5–27–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Trade Adjustment Assistance Program Reserve Funding Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, "Trade Adjustment Assistance Program Reserve Funding Request," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before June 30, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201605-1205-009* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Trade Adjustment Assistance Program Reserve Funding Request information collection. The DOL requires financial data for the Trade Adjustment Assistance (TAA) and North America Free Trade Agreement-TAA programs administered by States. The required data are necessary in order to meet statutory requirements prescribed in the Trade Act of 1974, as amended by the Trade Adjustment Assistance Act of 2002, the American Recovery and Reinvestment Act of 2009 (Division B, Title I, Subtitle I), the Omnibus Trade and Competitiveness Act of 1988, and the North American Free Trade Act. Using Form ETA–9117, a State may request reserve funds before the final distribution to cover training costs, job search allowances, relocation allowances, employment and case management services, and State administration of these benefits. Trade Act of 1974, as amended section 236(a)(2) authorizes this information collection. *See* 19 U.S.C. 2296(a)(2).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0275.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on May 31, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 11, 2016 (81 FR 12952).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0275. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Trade Adjustment Assistance Program Reserve Funding Request.

OMB Control Number: 1205–0275.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 25.

Total Estimated Number of Responses: 25.

Total Estimated Annual Time Burden: 50 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: May 25, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–12700 Filed 5–27–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employee Retirement Income Security Act of 1974 Investment Manager Electronic Registration

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Employee Retirement Income Security Act of 1974 Investment Manager Electronic Registration," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before June 30, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201605-1210-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Employee Retirement Income Security Act of 1974 (ERISA) Investment Manager Electronic Registration information collection. Regulations 29 CFR 2510.3–38 provides that, in order to meet the definition of investment manager under ERISA section 3(38), a State-registered investment adviser must register electronically through a centralized electronic filing system established by the Securities and Exchange Commission or a State investment authority called the Investment Adviser Registration Depository. ERISA section 3(38) authorizes this information collection. *See* 29 U.S.C. 1002(38)(B).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0125.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on May 31, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 23, 2015 (80 FR 72990).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0125. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Employee Retirement Income Security Act of 1974 Investment Manager Electronic Registration.

OMB Control Number: 1210–0125.

Affected Public: Private Sector—business or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 4.

Total Estimated Number of Responses: 4.

Total Estimated Annual Time Burden: 4 hours.

Total Estimated Annual Other Costs Burden: $270.

Dated: May 24, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–12695 Filed 5–27–16; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Standard Job Corps Contractor Information Gathering

AGENCY: Office of the Secretary, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, "Standard Job Corps Contractor Information Gathering," to the Office of Management and Budget (OMB) for review and approval for use, without change, in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before June 30, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201605-1205-005* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Standard Job Corps Contractor Information Gathering information collection. The ICR covers standard operating and/or reporting forms a Job Corps Center uses. Workforce Innovation and Opportunity Act sections 145, 151, and 159 authorize this information collection. *See* 29 U.S.C. 3195, 3201, and 3209.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB

Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0219. The current approval is scheduled to expire on May 31, 2016; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 3, 2016 (81 FR 11291).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0219. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Standard Job Corps Contractor Information Gathering.

OMB Control Number: 1205–0219.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 2,543.

Total Estimated Number of Responses: 197,459.

Total Estimated Annual Time Burden: 54,442 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: May 24, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–12696 Filed 5–27–16; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Workforce Investment Act Management Information and Reporting System

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, "Workforce Investment Act Management Information and Reporting System" to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before June 30, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201603-1205-007* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Workforce Investment Act Management Information and Reporting System information collection. This reporting structure includes quarterly (ETA 9090) and annual (ETA 9091) reports, as well as a standardized individual record file for program participants, called the Workforce Investment Act Standardized Record Data (WIASRD). A State submits WIASRD to the ETA and includes participant level information on customer demographics, type of services received, and statutorily defined measures of outcomes. This ICR also covers customer satisfaction surveys related to the program. Workforce Innovation and Opportunity Act (WIOA) section 116 authorizes this information collection. *See* 29 U.S.C. 3141.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0420.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on May 31, 2016. The DOL seeks to extend PRA authorization for this information collection while the Department completes promulgating final WIOA implementing regulations. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 9, 2016 (81 FR 6891).

Interested parties are encouraged to send comments to the OMB, Office of

Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0420. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Workforce Investment Act Management Information and Reporting System.

OMB Control Number: 1205–0420.

Affected Public: Individuals or Households; State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53,053.

Total Estimated Number of Responses: 1,846,036.

Total Estimated Annual Time Burden: 619,430 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: May 25, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–12699 Filed 5–27–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Reporting and Performance Standards System for Migrant and Seasonal Farmworker Programs

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration sponsored information collection request (ICR) revision titled, "Reporting and Performance Standards System for Migrant and Seasonal Farmworker Programs," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before June 30, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201602-1205-003* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Reporting and Performance Standards System for Migrant and Seasonal Farmworker Programs information collection relating to the operation of employment and training programs for migrant and seasonal farmworkers. The ICR also contains the basis of the performance standards system for National Farmworker Jobs Program grantees. The ETA uses the information obtained for program oversight, evaluation, and performance assessment. This ICR is considered a revision because the ETA proposes to discontinue use of Form ETA–9093, Budget Information Summary. Workforce Innovation and Opportunity Act section 116 authorizes this information collection. *See* 29 U.S.C. 3141.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0425. The current approval is scheduled to expire on May 31, 2016; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 27, 2015 (80 FR 74140).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0425. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Reporting and Performance Standards System for Migrant and Seasonal Farmworker Programs.

OMB Control Number: 1205–0425.

Affected Public: State, Local, and Tribal Governments; and Private Sector—not-for-profit institutions.

Total Estimated Number of Respondents: 69.

Total Estimated Number of Responses: 29,897.

Total Estimated Annual Time Burden: 73,279 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: May 24, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–12698 Filed 5–27–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Process Safety Management Standard of Highly Hazardous Chemicals

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) revision titled, "Process Safety Management Standard of Highly Hazardous Chemicals," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before June 30, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201605-1218-004* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Process Safety Management Standard of Highly Hazardous Chemicals (PSM Standard) information collection requirements codified in regulations 29 CFR 1910.119. The major information collection requirements in the PSM Standard include: Consulting with workers and their representatives on and providing them access to process hazard analyses and the development of other elements of the standard; developing a written action plan for implementing employee participation in process hazard analyses and other elements of the standard; completing a compilation of written process safety information; performing a process hazard analysis; documenting actions taken to resolve process hazard analysis team findings and recommendations; updating, revalidating and retaining the process hazard analysis; developing and implementing written operating procedures that are accessible to workers; reviewing operating procedures as often as necessary and certifying the procedures annually; developing and implementing safe work practices; preparing training records; informing contract employers of known hazards and pertinent provisions of the emergency action plan; maintaining a contract worker injury and illness log; establishing written procedures to maintain the integrity of and document inspections and tests of process equipment; providing information on permits issued for hot work operations; establishing and implementing written procedures to manage process changes; preparing reports at the conclusion of incident investigations, documenting resolutions and corrective measures, and reviewing the reports with affected personnel; establishing and implementing an emergency action plan; developing a compliance audit report and certifying compliance; and disclosing information necessary to comply with the Standard to persons responsible for compiling process safety information.

This information collection has been classified as a revision because of including additional retail exemption establishments and a change to an OSHA enforcement policy on the minimum concentration of a chemical in a process needed in order to count that chemical toward the threshold quantity levels that trigger coverage under the PSM Standard. Occupational Safety and Health Act sections 2(b)(9) and 8(c) authorize this information collection. *See* 29 U.S.C. 651(b)(9) and 657(c).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0200. The current approval is scheduled to expire on May 31, 2016; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 21, 2016 (81 FR 15130).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0200. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Process Safety Management Standard of Highly Hazardous Chemicals.

OMB Control Number: 1218–0200.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 11,114.

Total Estimated Number of Responses: 833,007.

Total Estimated Annual Time Burden: 4,082,616 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: May 24, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–12697 Filed 5–27–16; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (16–037)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the inventions described and claimed in USSN 14/200,122, RFID Torque-Sensing Tag System for Fasteners, MSC–25626–1, to Academic Tech Ventures Inc., having its principal place of business in Trinity, FL. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Johnson Space Center, 2101 NASA Parkway, Mail Code AL; Houston, Texas 77058, Phone (281) 483–3021; Fax (281) 483–6936

FOR FURTHER INFORMATION CONTACT: Ms. Michelle P. Lewis, Technology Transfer and Commercialization Office, NASA Johnson Space Center, 2101 NASA Parkway, Mail Code XP1, Houston, TX 77058, (281) 483–8051. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Mark P. Dvorscak,

Agency Counsel for Intellectual Property.

[FR Doc. 2016–12693 Filed 5–27–16; 8:45 am]

BILLING CODE P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Council on the Arts 188th Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held in Conference Rooms A & B at Constitution Center, 400 7th St., SW., Washington, DC 20506. Agenda times are approximate.

DATES: Friday, June 24, 2016 from 9 a.m. to 11:15 a.m.

FOR FURTHER INFORMATION CONTACT: Office of Public Affairs, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

SUPPLEMENTARY INFORMATION: The meeting, on March 24th in Conference Rooms A & B, from 9:30 a.m. to 11:15 a.m., will be open to the public on a space available basis. The tentative agenda is as follows: The meeting will begin at 9 a.m. with opening remarks and voting on recommendations for funding and rejection and guidelines, followed by updates from the Chairman. There also will be the following presentations (times are approximate): from 9:30 a.m. to 10 a.m.—*Presentation on the Cooper-Hewitt "Pen" Project* (Caroline Baumann, Director, Cooper-Hewitt National Design Museum); from 10 a.m. to 10:30 a.m.—*Presentation on Public Art App from Michigan Council for Arts and Cultural Affairs* (John Bracey, Executive Director, Michigan Council for Arts and Cultural Affairs); from 10:30 a.m. to 11 a.m.—*Presentation on The Virtual Choir* (Eric Whitacre, Composer & Conductor). From 11 to 11:15 a.m. there will be concluding remarks from the Chairman and announcement of voting results. The meeting will adjourn at 11:15 a.m.

The meeting also will be webcast. To register to watch the webcasting of this open session, go to: *https://www.arts.gov/event/2016/national-council-arts-june-2016-public-meeting*

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b, and in accordance with the February 15, 2012 determination of the Chairman. Additionally, discussion concerning purely personal information about individuals, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of Accessibility, National Endowment for the Arts, 1100 Pennsylvania Avenue NW, Washington, DC 20506, 202/682–5733, Voice/T.T.Y. 202/682–5496, at least seven (7) days prior to the meeting.

Dated: May 25, 2016.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 2016–12727 Filed 5–27–16; 8:45 am]

BILLING CODE 7537–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Annual Board of Directors Meeting; Sunshine Act Meeting

TIME AND DATE: 1:00 p.m., Monday, June 6, 2016.

PLACE: NeighborWorks America—Gramlich Boardroom, 999 North Capitol Street NE., Washington, DC 20002.

STATUS: Open (with the exception of Executive Session).

CONTACT PERSON: Jeffrey Bryson, EVP & General Counsel/Secretary, (202) 760–4101; *jbryson@nw.org.*

AGENDA:

I. CALL TO ORDER
II. Approval of Minutes
III. Executive Session: Report from CEO
IV. Executive Session: Report from CFO
V. Executive Session: Officer Compensation
VI. Board Elections and Appointments
VII. NeighborWorks Week Acknowledgment
VIII. Print Services Consolidation
IX. Capital Corporations
X. Project Reinvest Delegation
XI. Decision Framework
XII. NFMC Contract
XIII. Strategic Plan
XIV. Federal FY2018 OMB Submission and Timeline
XV. Management Program Background and Updates
XVI. Adjournment

The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(2), (4) and (6) permit closure of the following portions of this meeting:

- Report from CEO
- Report from CFO
- Officer Compensation

Jeffrey T. Bryson,

EVP & General Counsel/Corporate Secretary.

[FR Doc. 2016–12889 Filed 5–26–16; 4:15 pm]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards 635th Meeting

Cancellation of the June 8–10, 2016, 635th Advisory Committee on Reactor Safeguards Meeting

The 635th Advisory Committee on Reactor Safeguards Meeting scheduled for June 8–10, 2016, has been cancelled.

The notice of this meeting was previously published in the **Federal Register** on Tuesday, May 24, 2016, (81 FR 32792).

Information regarding this meeting can be obtained by contacting Quynh Nguyen, Designated Federal Official (DFO) (Telephone 301–415–5844 or Email: *Quynh.Nguyen@nrc.gov*) between 7:30 a.m. and 5:15 p.m. (EST)).

Dated at Rockville, Maryland, this 24th day of May, 2016.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2016–12737 Filed 5–27–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382; NRC–2016–0078]

Entergy Operations, Inc.; Waterford Steam Electric Station, Unit 3

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal application; opportunity to request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering an application for the renewal of operating license NPF–38, which authorizes Entergy Operations, Inc. (the applicant), to operate Waterford Steam Electric Station, Unit 3 (Waterford 3). The renewed license would authorize the applicant to operate Waterford 3 for an additional 20 years beyond the period specified in the current license. The current operating license for Waterford 3 expires at midnight on December 18, 2024.

DATES: A request for a hearing or petition for leave to intervene must be filed by August 1, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0078 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0078. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The License Renewal Application is available in ADAMS under Accession no. ML16088A324.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Phyllis Clark, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–6447, email: *Phyllis.Clark@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC received a license renewal application (LRA) from Entergy Operations, Inc., dated March 23, 2016, requesting renewal of operating license NPF–38, which authorizes Entergy Operations, Inc., to operate Waterford 3 at 3716 megawatts thermal. Waterford 3 is located in Killona, Louisiana. Entergy Operations, Inc. submitted the application, pursuant to part 54 of title 10 of the *Code of Federal Regulations* (10 CFR). A notice of receipt of the LRA was published in the **Federal Register** on April 14, 2016 (81 FR 22128).

The NRC's staff has determined that Entergy Operations, Inc. has submitted sufficient information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, 51.45, and 51.53(c), to enable the staff to undertake a review of the application, and that the application is, therefore, acceptable for docketing. The current docket number, 50–382, for operating license number NPF–382, will be retained. The determination to accept the LRA for docketing does not constitute a determination that a renewed license should be issued, and does not preclude the NRC staff from requesting additional information as the review proceeds.

Before issuance of the requested renewed license, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC may issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to: 1) Managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review; and 2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB) and that any changes made to the plant's CLB will comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement as a supplement to the Commission's NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," dated June 2013. In considering the LRA, the Commission must find that the applicable requirements of subpart A of 10 CFR part 51 have been satisfied, and that matters raised under 10 CFR 2.335 have been addressed. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold public scoping meetings. Detailed information regarding the environmental scoping meetings will be the subject of a separate **Federal Register** notice.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this **Federal Register** notice, any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the license. Requests for a hearing or petitions for leave to intervene must be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, and is accessible from the NRC Library on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to the Internet or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by email at *PDR.Resource@nrc.gov.*

If a request for a hearing/petition for leave to intervene is filed within the 60-day period, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary of the Commission (Secretary) or the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will issue a notice of a hearing or an appropriate order. In the event that no request for a hearing or petition for leave to intervene is filed within the 60-day period, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR parts 51 and 54, renew the license without further notice.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR parts 51 and 54. Pursuant to 10 CFR 2.309(d), the petition must provide the name, address, and telephone number of the petitioner; and specifically explain the reasons why intervention should be permitted with particular reference to the following factors for the Waterford 3 site: 1) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; 2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and 3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

In accordance with 10 CFR 2.309(f), each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the basis for each contention and a concise statement of the alleged facts or the expert opinion that supports the contention on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

The petition should be submitted to the Commission by August 1, 2016. Petitions filed after the deadline, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Atomic Safety and Licensing Board Panel or a Presiding Officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)-(iii).

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by August 1, 2016. The petition must be filed in accordance with the filing instructions in the "Electronic Submission (E-Filing)" section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by August 1, 2016.

The Commission requests that each contention be given a separate numeric or alpha designation within one of the following groups: (1) Ktechnical (primarily related to safety concerns); (2) environmental; or (3) miscellaneous.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention or propose substantially the same contention, the requestors/petitioners will be required to jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Detailed information about the license renewal process can be found under the Nuclear Reactors icon at *http://www.nrc.gov/reactors/operating/licensing/renewal.html* on the NRC's Web site. Copies of the application to renew the operating license for Waterford 3 is available for public inspection at the NRC's PDR, and at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html,* the NRC's Web site while the application is under review. The application may be accessed in ADAMS through the NRC Library on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession No. ML16088A324. As stated above, persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS may contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr.resources@nrc.gov.*

The NRC staff has verified that a copy of the license renewal application is also available to local residents near the site at the St. Charles Parish Library—East Regional Library, 160 W. Campus Drive, Destrehan, Louisiana 70047.

Dated at Rockville, Maryland, this 20th day of May 2016.

For the Nuclear Regulatory Commission.

Jane E. Marshall,

Acting Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–12739 Filed 5–27–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281; NRC–2016–0105]

Virginia Electric and Power Company; Surry Power Station, Unit Nos. 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental assessment and finding of no significant impact; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft environmental assessment and finding of no significant impact regarding the request for temporary exemption from specific requirements of acceptance criteria for emergency core cooling systems and evaluation models for Facility Operating License Nos. DPR–32 and DPR–37, issued to Virginia Electric and Power Company (the licensee) for the Surry Power Station, Unit Nos. 1 and 2 (Surry).

DATES: Submit comments by June 30, 2016. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0105. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Karen Cotton, telephone: 301–415–1438; email: *Karen.Cotton@nrc.gov;* or V. Sreenivas, telephone: 301–415–2597; email: *V.Sreenivas@nrc.gov.* Both are staff members of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0105 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0105.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

B. Submitting Comments

Please include Docket ID NRC–2016–0105 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is considering issuance of an exemption from § 50.46 of title 10 of the *Code of Federal Regulations* (10 CFR), "Acceptance criteria for emergency core cooling systems [(ECCS)] for light-water nuclear power reactors," and appendix K to 10 CFR part 50, "ECCS Evaluation Models," for Facility Operating License Nos. DPR–32 and DPR–37, issued to the licensee for operation of Surry, located in the southeastern part of Virginia, in Surry County, Virginia. In accordance with 10 CFR 51.21, the NRC prepared an environmental assessment documenting its findings. The NRC concluded that the proposed actions will have no significant environmental impact.

III. Draft Environmental Assessment and Finding of No Significant Impact

Description of the Proposed Action

The proposed action would exempt the licensee from certain requirements contained in 10 CFR 50.46 and appendix K to 10 CFR part 50 to allow the use of up to eight AREVA AGORA® lead test assemblies (LTAs) containing fuel rods fabricated with M5® cladding material at Surry. The proposed action is in accordance with the licensee's application dated September 30, 2015 (ADAMS Accession No. ML15282A036).

The Need for the Proposed Action

The proposed temporary exemption to 10 CFR 50.46 and appendix K to 10 CFR part 50 is needed to allow Surry to use up to eight LTAs containing fuel rods fabricated with M5® advanced zirconium cladding. The requested exemption is required since Surry's technical specifications do not currently include the use of M5® advanced zirconium cladding material for use in its reactors.

The regulations in 10 CFR 50.46(a)(1)(i) and appendix K to 10 CFR part 50 require the demonstration of adequate ECCS performance for light-water reactors that contain fuel consisting of uranium oxide pellets enclosed in Zircaloy or ZIRLO tubes. In addition, 10 CFR 50.44(a) addresses requirements to control hydrogen generated by Zircaloy or ZIRLO fuel after a postulated loss-of-coolant accident. Each of these three regulations, either implicitly or explicitly, assume that either Zircaloy or ZIRLO is used as the fuel rod cladding material.

The proposed temporary exemption is needed by Surry to allow the use of M5 alloy clad LTAs to evaluate cladding material for use in up to eight fuel assemblies and to provide a more robust design to eliminate grid to rod fretting fuel failures. The regulations specify standards and acceptance criteria only for fuel rods clad with Zircaloy or ZIRLO. Consistent with 10 CFR 50.46, a temporary exemption is required to use fuel rods clad with an advanced alloy that is not Zircaloy or ZIRLO. Therefore, the licensee needs a temporary exemption to insert up to eight LTAs containing new cladding material into the Surry, Unit Nos. 1 and 2, reactor cores.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed action will not present any undue risk to public health and safety. The details of the NRC staff's safety evaluation will be provided in the exemption that, if approved by the NRC, will be issued as part of the letter to the licensee approving the exemption to the regulation.

The proposed action does not exempt the licensee from complying with the acceptance and analytical criteria of 10 CFR 50.46 and appendix K to 10 CFR part 50 applicable to the M5 alloy cladding. The exemption solely allows the criteria set forth in these regulations to apply to the M5 cladding material, which is similar in design and function to the Zircaloy and ZIRLO cladding material required by NRC regulations. Consequently, no changes are being made in the types of effluents that may be released offsite and there is no significant increase in the amount of any effluent released offsite, nor a significant increase in occupational or public radiation exposure because this exemption will not change the criteria set forth in the present regulations, since the M5-clad fuel has been shown by the licensee to be capable of meeting this criteria. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have any foreseeable impacts to historic properties, land, air, or water resources, including impacts to biota, because the exemption only allows the application of the acceptance criteria in the regulations to the new fuel assemblies, rather than fuel assemblies with Zircaloy or ZIRLO cladding material. The exemptions do not allow any changes that will impact any offsite or onsite resources. In addition, there are also no known socioeconomic or environmental justice impacts associated with such proposed action. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed actions, the NRC staff considered denial of the proposed action (*i.e.,* the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. The environmental impacts of the proposed temporary exemption and the "no action" alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the "Final Environmental Statement Related to Operation of Surry Power Station Unit 1"; "Final Environmental Statement Related to Operation of Surry Power Station Unit 2," dated 1972; and NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 6, Regarding Surry Power Station Units 1 and 2, Final Report," dated November 2002 (ADAMS Accession No. ML023310717).

Agencies and Persons Consulted

The staff did not enter into consultation with any other Federal agency or with the State of Virginia regarding the environmental impact of the proposed action.

IV. Finding of No Significant Impact

The licensee has requested an exemption from certain requirements contained in 10 CFR 50.46 and appendix K to 10 CFR part 50 to allow the use of up to eight AREVA AGORA® LTAs containing fuel rods fabricated with M5® cladding material. On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Dated at Rockville, Maryland, this 23rd day of May 2016.

For the Nuclear Regulatory Commission.

Anne T Boland,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–12742 Filed 5–27–16; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77888; File No. SR–BatsEDGX–2016–18]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Change to the Market Data Section of Its Fee Schedule

May 24, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Market Data section of its fee schedule to amend: (i) The External Distribution and User fees for the EDGX Top and EDGX Last Sale feeds; and (ii) the New External Distributor Credit for the EDGX Top, EDGX Last Sale, and Bats One Feeds.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its fee schedule to amend: (i) The External Distribution and User fees for the EDGX Top and EDGX Last Sale feeds; and (ii) the New External Distributor Credit for the EDGX Top, EDGX Last Sale, and Bats One Feeds.

EDGX Top and Last Sale Fees

EDGX Top is a market data feed that includes top of book quotations and execution information for all equity securities traded on the Exchange.[5] EDGX Last Sale is a market data feed that includes last sale information for all equity securities traded on Exchange.[6] The Exchange proposes to increase the External Distribution and User fees for the EDGX Top and EDGX Last Sale feeds.[7]

The Exchange currently charges an External Distributor[8] of EDGX Last Sale a flat fee of $1,250 per month. The Exchange also separately charges an External Distributor of EDGX Top a flat fee of $1,250 per month.[9] The Exchange proposes to increase the External Distribution fee for both the EDGX Top and EDGX Last Sale feeds to $1,500 per month.

The Exchange also charges those who receive either EDGX Top or EDGX Last Sale from External Distributors different fees for both their Professional[10] and Non-Professional[11] Users. The Exchange currently assesses a monthly fee for Professional Users of $2.00 per User. Non-Professional Users are assessed a monthly fee of $0.05 per User. The Exchange now proposes to increase the Professional User fee to $4.00 per User per month and the Non-Professional User fee to $0.10 per User per month.[12] Under the description of the EDGX Top and EDGX Last Sale fees, the Exchange proposes to remove the word "the" before the references to EDGX Last Sale and EDGX Top in the sentences stating, in sum, that subscribers to EDGX Last Sale or EDGX Top may also receive, upon request and at no additional charge, access to EDGX Top or EDGX Last Sale, respectively.

The Exchange also offers a New External Distributor Credit under which new External Distributors of EDGX Top or EDGX Last Sale will not be charged a Distributor Fee for their first three (3) months. The Exchange now proposes to decrease the time a new External Distributor of EDGX Top or EDGX Last Sale will not be charged a Distributor Fee from their first three (3) months to their first one (1) month.[13]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Exchange Rule 13.8(c).

[6] *See* Exchange Rule 13.8(d).

[7] The Exchange notes that Bats EDGA Exchange, Inc. ("EDGA") and Bats BYX Exchange, Inc. ("BYX") also filed proposed rule changes with Commission to amend similar fees for their respective Top and Last Sale market data products. *See* File Nos. SR–BatsEDGA–2016–09 and SR–BatsBYX–2016–08. The Exchange represents that the proposed fees will continue to not cause the combined cost of subscribing to EDGX, EDGA, BYX, and Bats BZX Exchange Inc.'s ("BZX") individual Top and Last Sale feeds to be greater than those currently charged to subscribe to the Bats One Feed. *See* Securities Exchange Act Release Nos. 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR–BATS–2015–11); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR–EDGA–2015–09); 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR–EDGX–2015–09); *and* 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR–BYX–2015–09) ("Initial Bats One Feed Fee Filings"). In these filings, the Exchange represented that the cost of subscribing to each of the underlying individual feeds necessary to create the Bats One Feed would not be greater than the cost of subscribing to the Bats One Feed. *Id.*

[8] An "External Distributor" of an Exchange Market Data product is defined as "a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity." *See* the Exchange Fee Schedule *available at http://batstrading.com/support/fee_schedule/edgx/.*

[9] Subscribers to either EDGX Top or EDGX Last Sale are able to receive, upon request and at no additional cost, EDGX Last Sale or EDGX Top, as applicable.

[10] A "Professional User" is defined as "any User other than a Non-Professional User." *See* the Exchange Fee Schedule *available at http://batstrading.com/support/fee_schedule/edgx/.*

[11] A "Non-Professional User" is defined as "a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt." *Id.*

[12] Each External Distributor will continue to receive a credit against its monthly Distributor Fee for EDGX Top or EDGX Last Sale equal to the amount of its monthly Usage Fees up to a maximum of the Distributor Fee for EDGX Top or EDGX Last Sale. External Distributors may also continue to pay a monthly Enterprise Fee that permits a recipient firm who receives EDGX Top or EDGX Last Sale from an External Distributor to receive the data for an unlimited number of Professional and Non-Professional Users.

[13] The Exchange notes that New External Distributor Credit will continue to be available for three (3) months to those Distributors who began to

Lastly, the Exchange proposes to provide External Distributors of EDGX Depth,[14] upon request and at no additional External Distribution Fee, access to the EDGX Top or EDGX Last Sale feeds for External Distribution. External Distributors of EDGX Depth who request to also receive the EDGX Top or EDGX Last Sale feeds for no additional External Distributor Fee would continue to be liable for the applicable User fees for EDGX Top and EDGX Last Sale.[15]

Bats One Feed

In sum, the Bats One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer ("BBO") of all displayed orders for securities traded on EDGX and its affiliated exchanges and for which the Bats Exchanges report quotes under the Consolidated Tape Association ("CTA") Plan or the Nasdaq/UTP Plan. The Bats One Feed also contains the individual last sale information for the Bats Exchanges (collectively with the aggregate BBO, the "Bats One Summary Feed"). In addition, the Bats One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Bats Exchanges for up to five (5) price levels ("Bats One Premium Feed").[16]

The Exchange charges External Distributors of the Bats One Summary Feed a monthly Distribution fee of $5,000. The Exchange also offers a New External Distributor Credit under which new External Distributors of the Bats One Feed will not be charged a Distributor Fee for their first three (3) months in order to allow them to enlist new Users to receive the Bats One Summary Feed. The Exchange now proposes to decrease the time a new External Distributor of the Bats One Feed will not be charged a Distributor Fee from their first three (3) months to their first one (1) month.[17]

Implementation Date

The Exchange proposes to implement the proposed changes to its fee schedule on June 1, 2016.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6 of the Act,[18] in general, and furthers the objectives of section 6(b)(4),[19] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients. Lastly, the Exchange also believes that the proposed fees are reasonable and non-discriminatory because they will apply uniformly to all recipients of Exchange data.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act[20] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[21] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors will be subject to the proposed fees on an equivalent basis. EDGX Last Sale, EDGX Top and the Bats One Feed are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. The Exchange also believes the proposed External Distribution fees for EDGX Last Sale and EDGX Top are reasonable and equitable in light of the benefits to data recipients. To the extent consumers do purchase the data products, the revenue generated will offset the Exchange's fixed costs of operating and regulating a highly efficient and reliable platform for the trading of U.S. equities as well as the proposed fee decreases proposed by BYX and EDGA.[22] It will also help the Exchange cover its costs in developing and running that platform, as well as ongoing infrastructure costs. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data feeds. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to EDGX Top, EDGX Last Sale, and the Bats One Feed further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives because the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute EDGX Top, EDGX Last Sale, or the Bats One Feed, prospective Users likely would not subscribe to, or would cease subscribing to, the EDGX Top, EDGX Last Sale, or the Bats One Feed.

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distribute EDGX Top or EDGX Last Sale prior to June 1, 2016.

[14] EDGX Depth is a data feed that contains all displayed orders for listed securities trading on the Exchange, order executions, order cancellations, order modifications, order identification numbers, and administrative messages. *See* Exchange Rule 13.8(a).

[15] External Distributors may continue to pay a monthly Enterprise Fee that permits a recipient firm who receives EDGX Top or EDGX Last Sale from an External Distributor to receive the data for an unlimited number of Professional and Non-Professional Users.

[16] *See* Exchange Rule 13.8(b). *See also* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) ("Bats One Approval Order").

[17] The Exchange notes that New External Distributor Credit will continue to be available for three (3) months to those Distributors who began to distribute the Bats One Summary Feed prior to June 1, 2016.

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(4).

[20] 15 U.S.C. 78k–1.

[21] *See* 17 CFR 242.603.

[22] *See supra* note 7.

The Exchange notes that the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.[23]

The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. In addition, the proposed fees are reasonable when compared to similar fees for comparable products offered by the NYSE. Specifically, NYSE offers NYSE BBO, which includes best bid and offer for NYSE traded securities, for a monthly fee of $4.00 per professional subscriber and $0.20 per non-professional subscriber.[24] NYSE also offers NYSE Trades, which is a data feed that provides the last sale information for NYSE traded securities, for the same price as NYSE BBO. The Exchange's proposed per User Fees for EDGX Top and EDGX Last Sale are equal or comparable to the NYSE's fees for NYSE Trades and NYSE BBO.

The Exchange also believes that amending the New External Distributor Credit for EDGX Top, EDGX Last Sale, and the Bats One Feed is equitable and reasonable. The Exchange notes that the New External Distributor Credit was initially adopted at the time the Exchange began to offer the Bats One Summary Feed to subscribers. It was intended to incentivize new Distributors to enlist Users to subscribe to the Bats One Summary Feed in an effort to broaden the product's distribution. The credit was also provided for EDGX Top and EDGX Last Sale in order to alleviate any competitive issues that may arise with a vendor seeking to offer a product similar to the Bats One Summary Feed based on the underlying data feeds. The Exchange also believes that decreasing the time during which the New External Distributor Credit is available from three (3) to one (1) month for EDGX Top, EDGX Last Sale, and the Bats One Feed is equitable and reasonable because the credit has been available to Distributors since January 2015 providing new Distributors with ample time to grow their subscriber bases during the available three (3) month periods. Decreasing the credit period to one (1) month is equitable and reasonable as it would continue to provide new Distributors ample time to grow their subscriber bases.

Lastly, the Exchange believes it is equitable and reasonable to provide External Distributors of EDGX Depth, upon request and at no additional External Distribution Fee, access to the EDGX Top or EDGX Last Sale feeds for External Distribution. Doing so will increase the market data products available without increasing the Distribution fees for External Distributors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price EDGX Last Sale, EDGX Top, and the Bats One Feed are constrained by: (i) Competition among exchanges, other trading platforms, and Trade Reporting Facilities ("TRF") that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, EDGX Last Sale, EDGX Top, and the Bats One Feed compete with a number of alternative products. For instance, EDGX Last Sale, EDGX Top, and the Bats One Feed do not provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and Electronic Communication Networks ("ECN") that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce last sale information products, and many currently do, including Nasdaq and NYSE. In addition, market participants can gain access to EDGX last sale prices and top-of-book quotations, though integrated with the prices of other markets, on feeds made available through the SIPs.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on the Exchange's data products and the Exchange's compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to EDGX Last Sale, EDGX Top, and the Bats One Feed, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

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[23] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm. See also* Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR–NYSE–2014–64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

[24] *See* NYSE Market Data Pricing dated March 2016 *available at http://www.nyxdata.com/.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[25] and paragraph (f) of Rule 19b–4 thereunder.[26] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BatsEDGX–2016–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BatsEDGX–2016–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BatsEDGX–2016–18, and should be submitted on or before June 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–12665 Filed 5–27–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–549, OMB Control No. 3235–0610]

Submission for OMB Review; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:
Rule 248.30.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 248.30 (17 CFR 248.30) under Regulation S–P, is titled "Procedures to Safeguard Customer Records and Information; Disposal of Consumer Report Information." Rule 248.30 (the "safeguard rule") requires brokers, dealers, investment companies, and investment advisers registered with the Commission ("registered investment advisers") (collectively "covered institutions") to adopt written policies and procedures for administrative, technical, and physical safeguards to protect customer records and information. The safeguards must be reasonably designed to "insure the security and confidentiality of customer records and information," "protect against any anticipated threats or hazards to the security and integrity" of those records, and protect against unauthorized access to or use of those records or information, which "could result in substantial harm or inconvenience to any customer." The safeguard rule's requirement that covered institutions' policies and procedures be documented in writing constitutes a collection of information and must be maintained on an ongoing basis. This requirement eliminates uncertainty as to required employee actions to protect customer records and information and promotes more systematic and organized reviews of safeguard policies and procedures by institutions. The information collection also assists the Commission's examination staff in assessing the existence and adequacy of covered institutions' safeguard policies and procedures.

We estimate that as of the end of 2015, there are 4,176 broker-dealers, 4,041 investment companies, and 11,956 investment advisers registered with the Commission, for a total of 20,173 covered institutions. We believe that all of these covered institutions have already documented their safeguard policies and procedures in writing and therefore will incur no hourly burdens related to the initial documentation of policies and procedures.

Although existing covered institutions would not incur any initial hourly burden in complying with the safeguards rule, we expect that newly registered institutions would incur some hourly burdens associated with documenting their safeguard policies and procedures. We estimate that approximately 1200 broker-dealers, investment companies, or investment advisers register with the Commission annually. However, we also expect that approximately 70% of these newly registered covered institutions (840) are affiliated with an existing covered institution, and will rely on an organization-wide set of previously documented safeguard policies and procedures created by their affiliates. We estimate that these affiliated newly registered covered institutions will incur a significantly reduced hourly burden in complying with the safeguards rule, as they will need only to review their affiliate's existing policies and procedures, and identify and adopt the relevant policies for their business. Therefore, we expect that newly registered covered institutions with existing affiliates will incur an hourly burden of approximately 15 hours in identifying and adopting safeguard policies and procedures for their business, for a total hourly burden for all affiliated new institutions of 12,600 hours. We expect that half of this time would be incurred by inside counsel at an hourly rate of $380, and half would be by a compliance officer at an hourly rate of $334, for a total cost of $4,498,200.

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[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f).

[27] 17 CFR 200.30–3(a)(12).

Finally, we expect that the 360 newly registered entities that are not affiliated with an existing institution will incur a significantly higher hourly burden in reviewing and documenting their safeguard policies and procedures. We expect that virtually all of the newly registered covered entities that do not have an affiliate are likely to be small entities and are likely to have smaller and less complex operations, with a correspondingly smaller set of safeguard policies and procedures to document, compared to other larger existing institutions with multiple affiliates. We estimate that it will take a typical newly registered unaffiliated institution approximately 60 hours to review, identify, and document their safeguard policies and procedures, for a total of 21,600 hours for all newly registered unaffiliated entities. We expect that half of this time would be incurred by inside counsel at an hourly rate of $380, and half would be by a compliance officer at an hourly rate of $334, for a total cost of $7,711,200.

Therefore, we estimate that the total annual hourly burden associated with the safeguards rule is 34,200 hours at a total hourly cost of $12,209,400. We also estimate that all covered institutions will be respondents each year, for a total of 20,173 respondents.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number. The safeguard rule does not require the reporting of any information or the filing of any documents with the Commission. The collection of information required by the safeguard rule is mandatory.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or send an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 24, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–12676 Filed 5–27–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77891; File No. SR–NYSEArca–2016–70]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Regarding Use of Rule 144A Securities by the Fidelity Corporate Bond ETF, Fidelity Investment Grade Bond ETF, Fidelity Limited Term Bond ETF, and Fidelity Total Bond ETF

May 24, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 11, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to permit the Fidelity Corporate Bond ETF, Fidelity Investment Grade Bond ETF, Fidelity Limited Term Bond ETF, and Fidelity Total Bond ETF (each a "Fund" and together the "Funds") to consider securities issued pursuant to Rule 144A under the Securities Act of 1933 as debt securities eligible for the principal investment of 80% of Fund assets. Shares of the Fidelity Corporate Bond ETF, Fidelity Limited Term Bond ETF, and Fidelity Total Bond ETF have been approved by the Exchange for listing and trading on the Exchange under NYSE Arca Equities Rule 8.600. The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission approved proposed rule changes relating to listing and trading on the Exchange of shares ("Shares") of the Funds under NYSE Arca Equities Rule 8.600,[4] which governs the listing and trading of Managed Fund Shares.[5] The Exchange proposes to amend the representation in the Prior Corporate Bond Notice and Prior Total Bond Notice to provide each Fund may include Rule 144A securities within a Fund's principal investments in debt securities (*i.e.*, debt securities in which at least 80% of a Fund's assets are invested).

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[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 72068 (May 1, 2014), 79 FR 25923 (May 6, 2014) (SR–NYSEArca–2014–47) (notice of filing of proposed rule change relating to listing and trading of Shares of Fidelity Corporate Bond ETF Managed Shares under NYSE Arca Equities Rule 8.600) ("Prior Corporate Bond Notice"); 72439 (June 20, 2014), 79 FR 36361 (June 26, 2014) (SR–NYSEArca–2014–47) (order approving proposed rule change relating to listing and trading of Shares of Fidelity Corporate Bond ETF Managed Shares under NYSE Arca Equities Rule 8.600) ("Prior Corporate Bond Order" and, together with the Prior Corporate Bond Notice, the "Prior Corporate Bond Releases"); 72064 (May 1, 2014), 79 FR 25908 (May 6, 2014) (SR–NYSEArca–2014–46) (notice of filing of proposed rule change relating to listing and trading of Shares of Fidelity Investment Grade Bond ETF; Fidelity Limited Term Bond ETF; and Fidelity Total Bond ETF under NYSE Arca Equities Rule 8.600) ("Prior Total Bond Notice); 72748 (August 4, 2014), 79 FR 46484 (August 8, 2014) (SR–NYSEArca–2014–46) (order approving proposed rule change relating to listing and trading of Shares of the Fidelity Investment Grade Bond ETF, Fidelity Limited Term Bond ETF, and Fidelity Total Bond ETF under NYSE Arca Equities Rule 8.600) ("Prior Total Bond ETF Order" and, together with the Prior Total Bond Notice, the "Prior Total Bond Releases").

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its

I. Description of the Funds

Fidelity Investments Money Management, Inc. ("FIMM"), an affiliate of Fidelity Management & Research Company ("FMR"), is the manager ("Manager") of each Fund. FMR Co., Inc. ("FMRC") serves as a sub-adviser for the Fidelity Total Bond ETF. FMRC has day-to-day responsibility for choosing certain types of investments of foreign and domestic issuers for Fidelity Total Bond ETF. Other investment advisers, which also are affiliates of FMR, serve as sub-advisers to the Funds and assist FIMM with foreign investments, including Fidelity Management & Research (U.K.) Inc. ("FMR U.K."), Fidelity Management & Research (Hong Kong) Limited ("FMR H.K."), and Fidelity Management & Research (Japan) Inc. ("FMR Japan") (each a "Sub-Adviser" and together with FMRC, "Sub-Advisers"). Fidelity Distributors Corporation ("FDC") is the distributor for the Funds' Shares.

The Funds are funds of Fidelity Merrimack Street Trust ("Trust"), a Massachusetts business trust.[6]

Shares of the Fidelity Corporate Bond ETF, Fidelity Limited Term Bond ETF, and Fidelity Total Bond ETF have been approved by the Exchange for listing and trading on the Exchange under NYSE Arca Equities Rule 8.600 and are currently trading on the Exchange.

A. Fidelity Corporate Bond ETF

As described in the Prior Corporate Bond Notice, the Fidelity Corporate Bond ETF seeks a high level of current income. The Manager normally invests at least 80% of Fidelity Corporate Bond ETF assets in investment-grade corporate bonds and other corporate debt securities.[7] Corporate debt securities are bonds and other debt securities issued by corporations and other business structures, as described in the Prior Corporate Bond Notice.

The Fidelity Corporate Bond ETF may hold uninvested cash or may invest it in cash equivalents such as money market securities, or shares of short-term bond exchanged-traded funds registered under the 1940 Act ("ETFs") or mutual funds or money market funds, including Fidelity central funds (special types of investment vehicles created by Fidelity for use by the Fidelity funds and other advisory clients). The Manager uses the Barclays® U.S. Credit Bond Index as a guide in structuring the Fund and selecting its investments. FIMM manages the Fund to have similar overall interest rate risk to the Barclays® U.S. Credit Bond Index.

As stated in the Prior Corporate Bond Releases, in buying and selling securities for the Fund, the Manager analyzes the credit quality of the issuer, security-specific features, current valuation relative to alternatives in the market, short-term trading opportunities resulting from market inefficiencies, and potential future valuation. In managing the Fund's exposure to various risks, including interest rate risk, the Manager considers, among other things, the market's overall risk characteristics, the market's current pricing of those risks, information on the Fund's competitive universe and internal views of potential future market conditions.

While the Manager normally invests at least 80% of assets of the Fund in investment grade corporate bonds and other corporate debt securities, as described above, the Manager may invest up to 20% of the Fund's assets in other securities and financial instruments, as described in the Prior Corporate Bond Notice.

According to the Registration Statement, the Fund may invest in restricted securities, which are subject to legal restrictions on their sale. Restricted securities generally can be sold in privately negotiated transactions, pursuant to an exemption from registration under the Securities Act, or in a registered public offering.

B. Fidelity Investment Grade Bond ETF, Fidelity Limited Term Bond ETF and Fidelity Total Bond ETF

As described in the Prior Total Bond Notice, the Fidelity Investment Grade Bond ETF (which has not yet commenced operation) will seek a high level of current income. The Manager normally will invest at least 80% of the Fund's assets in investment-grade debt securities (those of medium and high quality). The debt securities in which the Fund may invest are corporate debt securities; U.S. Government securities; repurchase agreements and reverse repurchase agreements; money market securities; mortgage and other asset-backed securities; senior loans; loan participations and loan assignments and other evidences of indebtedness, including letters of credit, revolving credit facilities and other standby financing commitments; stripped securities; municipal securities; sovereign debt obligations; and obligations of international agencies or supranational entities (collectively, "Debt Securities").

As described in the Prior Total Bond Notice, the Fidelity Investment Grade Bond ETF may hold uninvested cash or may invest it in cash equivalents such as repurchase agreements, shares of short term bond ETFs, mutual funds or money market funds, including Fidelity central funds (special types of investment vehicles created by Fidelity for use by the Fidelity funds and other advisory clients). The Manager will use the Barclays U.S. Aggregate Bond Index (the "Aggregate Index") as a guide in structuring the Fund and selecting its investments, and will manage the Fund to have similar overall interest rate risk to the Aggregate Index.

As described in the Prior Total Bond Notice, the Manager will consider other factors when selecting the Fidelity Investment Grade Bond ETF's investments, including the credit quality of the issuer, security-specific features, current valuation relative to alternatives in the market, short-term trading opportunities resulting from market inefficiencies, and potential future valuation. In managing the Fidelity Investment Grade Bond ETF's exposure to various risks, including interest rate risk, the Manager will consider, among other things, the market's overall risk characteristics, the market's current pricing of those risks, information on the Fidelity Investment Grade Bond ETF's competitive universe and internal views of potential future market conditions.

As described in the Prior Total Bond Notice, the Fidelity Limited Term Bond

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investment adviser consistent with its investment objectives and policies.

[6] The Trust is registered under the 1940 Act. On December 29, 2015, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act") and the 1940 Act relating to the Funds (File Nos. 333–186372 and 811–22796) ("Registration Statement"). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 30513 (May 10, 2013) ("Exemptive Order") (File No. 812–14104).

[7] According to the Registration Statement, investment-grade debt securities include all types of debt instruments, including corporate debt securities, that are of medium and high-quality. An investment-grade rating means the security or issuer is rated investment-grade by a credit rating agency registered as a nationally recognized statistical rating organization ("NRSRO") with the Commission (for example, Moody's Investors Service, Inc.), or is unrated but considered to be of equivalent quality by the Fidelity Corporate Bond ETF's Manager or Sub-Advisers.

ETF seeks to provide a high rate of income. The Manager normally invests at least 80% of the Fidelity Limited Term Bond ETF's assets in investment-grade Debt Securities (those of medium and high quality). The Fidelity Limited Term Bond ETF may hold uninvested cash or may invest it in cash equivalents such as repurchase agreements, shares of short term bond ETFs, mutual funds or money market funds, including Fidelity central funds (special types of investment vehicles created by Fidelity for use by the Fidelity funds and other advisory clients). The Manager uses the Fidelity Limited Term Composite Index (the "Composite Index") as a guide in structuring the Fund and selecting its investments. The Manager manages the Fidelity Limited Term Bond ETF to have similar overall interest rate risk to the Composite Index.

The Manager considers other factors when selecting the Fidelity Limited Term Bond ETF's investments, including the credit quality of the issuer, security-specific features, current valuation relative to alternatives in the market, short-term trading opportunities resulting from market inefficiencies, and potential future valuation. In managing the Fidelity Limited Term Bond ETF's exposure to various risks, including interest rate risk, the Manager considers, among other things, the market's overall risk characteristics, the market's current pricing of those risks, information on the Fund's competitive universe and internal views of potential future market conditions.

As described in the Prior Total Bond Notice, the Fidelity Total Bond ETF seeks a high level of current income. The Manager normally invests at least 80% of the Fidelity Total Bond ETF's assets in Debt Securities. The Manager allocates the Fidelity Total Bond ETF's assets across investment-grade, high yield, and emerging market Debt Securities. The Manager may invest up to 20% of the Fund's assets in lower-quality Debt Securities. The Fidelity Total Bond ETF may hold uninvested cash or may invest it in cash equivalents such as repurchase agreements, shares of short term bond ETFs mutual funds or money market funds, including Fidelity central funds (special types of investment vehicles created by Fidelity for use by the Fidelity funds and other advisory clients).

The Manager uses the Barclays U.S. Universal Bond Index (the "Universal Index") as a guide in structuring and selecting the investments of the Fidelity Total Bond ETF and selecting its investments, and in allocating the Fidelity Total Bond ETF's assets across the investment-grade, high yield, and emerging market asset classes. The Manager manages the Fidelity Total Bond ETF to have similar overall interest rate risk to the Universal Index. The Manager considers other factors when selecting the Fund's investments, including the credit quality of the issuer, security-specific features, current valuation relative to alternatives in the market, short-term trading opportunities resulting from market inefficiencies, and potential future valuation. In managing the Fund's exposure to various risks, including interest rate risk, the Manager considers, among other things, the market's overall risk characteristics, the market's current pricing of those risks, information on the Fund's competitive universe and internal views of potential future market conditions.

As described in the Prior Total Bond Notice, the Manager may invest the Fidelity Total Bond ETF's assets in Debt Securities of foreign issuers in addition to securities of domestic issuers.

While, as described above, the Manager normally invests at least 80% of assets of Fidelity Limited Term Bond ETF in investment-grade Debt Securities (and will normally invest at least 80% of assets of the Fidelity Investment Grade Bond ETF in investment-grade Debt Securities), and the Manager normally invests at least 80% of assets of the Fidelity Total Bond ETF in Debt Securities, the Manager may invest up to 20% of a Fund's assets in other securities and financial instruments ("Other Investments", as described in the Prior Total Bond Notice).

As described in the Prior Corporate Bond Notice and Prior Total Bond Notice, as part of a Fund's Other Investments, (*i.e.*, up to 20% of a Fund's assets), each Fund may invest in restricted securities, which are subject to legal restrictions on their sale.[8]

II. Proposed Change

The Exchange proposes that each Fund may include Rule 144A securities within a Fund's principal investments in debt securities (*i.e.*, debt securities in which at least 80% of a Fund's assets are invested). As discussed below, the Exchange believes it is appropriate for Rule 144A securities to be included as principal investments of a Fund in view of (1) the high level of liquidity in the market for such securities compared to other debt securities asset classes, and (2) the high level of transparency in the market for Rule 144A securities, particularly in light of reporting of transaction data in such securities through the Trade Reporting and Compliance Engine ("TRACE") operated by the Financial Industry Regulatory Authority ("FINRA").

FMR has represented to the Exchange that Rule 144A securities account for approximately 20% of daily trading volume in U.S. corporate bonds. Dealers trade and report transactions in Rule 144A securities in the same manner as registered corporate bonds. While the average number of daily trades and U.S. dollar volume in registered corporate bonds is much higher than in Rule 144A securities, the average lot size is higher for Rule 144A securities.[9] Specifically, the average lot size for 144A securities for the period January 1, 2015 through August 31, 2015 was approximately $2.2 million, compared to an average lot size for the same period of approximately $500,000 for registered corporate bonds.

In addition, in 2013, the Commission approved FINRA rules relating to dissemination of information regarding transactions in Rule 144A securities in TRACE.[10] In approving FINRA's proposed rule change to amend its rules regarding dissemination of Rule 144A transactions, the Commission stated:

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[8] Restricted securities are subject to legal restrictions on their sale. Restricted securities generally can be sold in privately negotiated transactions, pursuant to an exemption from registration under the Securities Act, or in a registered public offering. Rule 144A securities are securities which, while privately placed, are eligible for purchase and resale pursuant to Rule 144A. Rule 144A permits certain qualified institutional buyers, such as a Fund, to trade in privately placed securities even though such securities are not registered under the Securities Act.

[9] Source: MarketAxess Trace Data. For example, for the period January 1, 2015 through August 31, 2015, for registered bonds and Rule 144A securities with $1 billion to $1.999 billion the average daily dollar volume outstanding was approximately $6.8 billion and $1.7 billion, respectively, and the average lot size was $666,647 and $2,398,292, respectively.

[10] *See* Securities Exchange Act Release Nos. 70009 (July 19, 2013), 78 FR 44997 (July 25, 2103) (SR–FINRA–2013–029) (notice of filing of a proposed rule change relating to the dissemination of transactions in TRACE-Eligible securities effected pursuant to Rule 144A); 70345 (September 6, 2013), 78 FR 56251 (September 12, 2013) (SR–FINRA–2013–029) (order approving proposed rule change relating to the dissemination of transactions in TRACE-Eligible securities effected pursuant to Rule 144A). In the proposed rule change, FINRA proposed to amend FINRA Rule 6750 to provide for the dissemination of Rule 144A transactions, provided the asset type (*e.g.*, corporate bonds) currently is subject to dissemination under FINRA Rule 6750; to amend the dissemination protocols to extend the dissemination caps currently applicable to the non-Rule 144A transactions in such asset type (*e.g.*, non-Rule 144A corporate bond transactions) to Rule 144A transactions in such securities; to amend FINRA Rule 7730 to establish a data set for real-time Rule 144A transaction data and a second data set for historic Rule 144A transaction data, to amend the definition of "Historic TRACE Data" to reference the three data sets currently included therein and the proposed fourth data set; and to make other clarifying and technical amendments. FINRA Rule 6730(a) requires any transaction in a TRACE-Eligible security to be reported to TRACE as soon as practicable but no later than within 15 minutes of the transaction, subject to specified exceptions.

> Real-time dissemination of last-sale information could aid dealers in deriving better quotations, because they would know the prices at which other market participants had recently transacted in the same or similar instruments. This information could aid all market participants in evaluating current quotations, because they could inquire why dealer quotations might differ from the prices of recently executed transactions. Furthermore, post-trade transparency affords market participants a means of testing whether dealer quotations before the last sale were close to the price at which the last sale was executed. In this manner, post-trade transparency can promote price competition between dealers and more efficient price discovery and ultimately lower transaction costs in the market for Rule 144A securities.

Transactions executed by FINRA members became subject to dissemination through FINRA's TRACE on June 30, 2014, thus providing a level of transparency to the Rule 144A market comparable to that of registered bonds.[11]

The Exchange notes that, while the proposed rule change would categorize Rule 144A securities within a Fund's principal investments in debt securities, any investments in Rule 144A securities, of course, would be required to comply with restrictions under the 1940 Act and rules thereunder relating to investment in illiquid assets.[12] As stated in the Prior Corporate Bond Notice and Prior Total Bond Notice, each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Manager or Sub-Advisers. Each Fund monitors its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid assets. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[13]

Moreover, as stated in the Prior Corporate Bond Notice and Prior Total Bond Notice, each Fund does not currently intend to purchase any asset if, as a result, more than 10% of its net assets would be invested in assets that are deemed to be illiquid because they are subject to legal or contractual restrictions on resale or because they cannot be sold or disposed of in the ordinary course of business at approximately the prices at which they are valued. For purposes of a Fund's illiquid assets limitation discussed above, if through a change in values, net assets, or other circumstances, a Fund were in a position where more than 10% of its net assets were invested in illiquid assets, it would consider appropriate steps to protect liquidity.

The Prior Corporate Bond Notice and Prior Total Bond Notice stated that various factors may be considered in determining the liquidity of a Fund's investments, including: (1) The frequency of trades and quotes for the asset; (2) the number of dealers wishing to purchase or sell the asset and the number of other potential purchasers; (3) dealer undertakings to make a market in the asset; and (4) the nature of the asset and the nature of the marketplace in which it trades (including any demand, put or tender features, the mechanics and other requirements for transfer, any letters of credit or other credit enhancement features, any ratings, the number of holders, the method of soliciting offers, the time required to dispose of the security, and the ability to assign or offset the rights and obligations of the asset).

The Exchange believes that the size of the Rule 144A market (approximately 20% of daily trading volume in U.S. corporate bonds), the active participation of multiple dealers utilizing trading protocols that are similar to those in the corporate bond market, and the transparency of the 144A market resulting from reporting of Rule 144A transactions in TRACE will deter manipulation in trading the Shares.

Except for the change described above, all other representations made in the Prior Corporate Bond Releases and the Prior Total Bond Releases remain unchanged.[14] The Funds will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

The Exchange represents that the trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange or FINRA, on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[15] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal

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FINRA Rule 6730(c) requires the trade report to contain information on size, price, time of execution, amount of commission, the date of settlement and other information.

[11] In its June 30, 2014 press release "FINRA Brings 144A Corporate Debt Transactions Into the Light", FINRA stated: 144A transactions—resales of restricted corporate debt securities to large institutions called qualified institutional buyers (QIBs)—account for a significant portion of the volume in corporate debt securities. In the first quarter of 2014, 144A transactions comprised nearly 13 percent of the average daily volume in investment-grade corporate debt, and nearly 30 percent of the average daily volume in high-yield corporate debt. 144A transactions comprised nearly 20 percent of the average daily volume in the corporate debt market as a whole. Through the Trade Reporting and Compliance Engine (TRACE), FINRA will disseminate 144A transactions subject to the same dissemination caps that are currently in effect for non-144A transactions. The same dissemination cap for investment-grade corporate bonds ($5 million) applies to both 144A and non-144A corporate bond transactions, and the $1 million dissemination cap for high-yield corporate bonds similarly applies to both 144A and non-144A transactions. 144A transactions are also subject to the same 15-minute reporting requirement as non-144A corporate debt transactions. *See also,* FINRA Regulatory Notice 13–35 October 2013.

[12] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) ("Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act.

[13] In its recent rulemaking proposal relating to open-end fund liquidity risk management programs, the Commission noted that "[s]ecurities offered pursuant to rule 144A under the Securities Act may be considered liquid depending on certain factors". The Commission, citing to the "Statement Regarding 'Restricted Securities'" (see note 11, above), noted: "The Commission stated [in the "Statement Regarding 'Restricted Securities'"] that 'determination of the liquidity of Rule 144A securities in the portfolio of an investment company issuing redeemable securities is a question of fact for the board of directors to determine, based upon the trading markets for the specific security' and noted that the board should consider the unregistered nature of a rule 144A security as one of the factors it evaluates in determining its liquidity." *See* Release Nos. 33–9922; IC–31835; File Nos. S7–16–15; S7–08–15 (September 22, 2015); note 94.

[14] *See* note 4, *supra*. All terms referenced but not defined herein are defined in the Prior Corporate Bond Notice and Prior Total Bond Notice.

[15] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

securities laws applicable to trading on the Exchange. The Exchange or FINRA, on behalf of the Exchange, communicate as needed regarding trading in the Shares and exchange-listed equity securities (including ADRs) with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and exchange-listed equity securities (including ADRs) from such markets and other entities. The Exchange may obtain information regarding trading in the Shares and exchange-listed equity securities (including ADRs) from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[16] In addition, as stated in the Prior Corporate Bond Releases and the Prior Total Bond Releases, investors have ready access to information regarding the Funds' holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[17] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange believes it is appropriate for Rule 144A securities to be included as principal investments of a Fund in view of (1) the high level of liquidity in the market for such securities compared to other debt securities asset classes, and (2) the high level of transparency in the market for Rule 144A securities, particularly in light of reporting of transaction data in such securities through TRACE. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Funds reported to TRACE. The Manager and the Sub-Advisers are not broker-dealers but are affiliated with one or more broker-dealers and have each implemented a fire wall with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the portfolios, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolios. Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Manager or Sub-Advisers.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Funds reported to TRACE. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. Transaction information relating to Rule 144A securities will be available via TRACE. Moreover, the Portfolio Indicative Value with respect to Shares of each Fund will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, each Fund will disclose on the Trust's Web site the Disclosed Portfolio that will form the basis for a Fund's calculation of NAV at the end of the business day. The Trust's Web site will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the size of the Rule 144A market (approximately 20% of daily trading volume in U.S. corporate bonds), the active participation of multiple dealers utilizing trading protocols that are similar to those in the corporate bond market, and the transparency of the Rule 144A market resulting from reporting of Rule 144A transactions in TRACE will deter manipulation in trading the Shares. Any investments in Rule 144A securities would be required to comply with restrictions under the 1940 Act and rules thereunder relating to investment in illiquid assets. Each Fund does not currently intend to purchase any asset if, as a result, more than 10% of its net assets would be invested in assets that are deemed to be illiquid because they are subject to legal or contractual restrictions on resale or because they cannot be sold or disposed of in the ordinary course of business at approximately the prices at which they are valued. Various factors may be considered in determining the liquidity of a Fund's investments, including: (1) The frequency of trades and quotes for the asset; (2) the number of dealers wishing to purchase or sell the asset and the number of other potential purchasers; (3) dealer undertakings to make a market in the asset; and (4) the nature of the asset and the nature of the marketplace in which it trades (including any demand, put or tender features, the mechanics and other requirements for transfer, any letters of credit or other credit enhancement features, any ratings, the number of holders, the method of soliciting offers, the time required to dispose of the security, and the ability to assign or offset the rights and obligations of the asset). The Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors have ready access to information regarding each Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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[16] For a list of the current members of ISG, *see www.isgportal.org*. The Exchange notes that not all of the components of the portfolio for a Fund may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[17] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes the proposed rule change is designed to allow the Funds to invest in a broader range of debt securities thereby helping the Funds to achieve their respective investment objective.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2016–70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–70. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–70, and should be submitted on or before June 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–12668 Filed 5–27–16; 8:45 am]

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[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77899; File No. SR–NYSE–2016–37]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Removing From Its Rules Certain Internal Procedures Regarding the Use of Fine Income

May 24, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 13, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to remove from its rules certain internal procedures regarding the use of fine income. The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to remove from its rules certain internal procedures regarding the use of fine income, which were approved in 2007 (the "Fine Income Procedures") in order to align the Exchange's use of fine income with other self-regulatory organizations ("SROs"). The Exchange believes that the Fine Income Limitations [sic] are no longer necessary and are duplicative of the limitations on the use of regulatory assets and income, including fine income, set forth in Article IV, Section 4.05 of the operating agreement of the Exchange ("Section 4.05"). Section 4.05 prohibits the Exchange from using any regulatory assets or any regulatory fees, fines or penalties collected by the Exchange's regulatory staff for commercial purposes or distributing such assets, fees, fines or penalties to NYSE Group, Inc. ("NYSE Group"), the Exchange's member, or any other entity.[4]

For the reasons discussed below, the Exchange believes that together Section 4.05 and the provisions governing the Regulatory Oversight Committee ("ROC") of the Exchange's Board of Directors adequately address the concerns underlying the Fine Income Procedures and provide sufficient protections to ensure the proper use of fine income by the Exchange.

Background

The Fine Income Procedures

In 2006, New York Stock Exchange, Inc. merged with Archipelago Holdings, Inc. (the "Archipelago Merger").[5] Prior to approval of rule changes related to the Archipelago Merger, in conversation with the staff of the Securities and Exchange Commission ("Commission"), the Exchange undertook to subsequently file a proposed rule change regarding the use of fines collected from member organizations following disciplinary action against such member organizations.[6] On January 31, 2007, the Commission approved the proposed rule change establishing the Fine Income Procedures.[7]

The Exchange's Fine Income Procedures referred to actions to be taken by the Exchange's subsidiary, NYSE Regulation, Inc. ("NYSE Regulation"), and NYSE Regulation's board of directors (the "NYSE Regulation Board"), because at the time performance of certain of the Exchange's regulatory functions was delegated to NYSE Regulation. Such delegation was made in 2006 pursuant to a Delegation Agreement (the "Delegation Agreement") between the Exchange, NYSE Regulation, and NYSE Market (DE), Inc. ("NYSE Market (DE)").[8]

As approved, the Fine Income Procedures provided that:[9]

- Fines would play no role in the annual NYSE Regulation budget process. Beginning with the preparation of the 2007 operating budget, fines would be budgeted at zero, that is, budgeted expenses of NYSE Regulation would be offset entirely by budgeted income that did not include any anticipated income from fines. Among other things, this meant that fines would not offset amounts budgeted for compensation of NYSE Regulation employees or directors. During the course of a year, income from fines would be considered as available to fund non-compensation expenses of NYSE Regulation, which expenses were not anticipated in the budget process or which could not be included in the budget prepared in advance of the fiscal year because NYSE Regulation was unable to budget sufficient income from sources other than fines to offset the expenses.
- The use of fine income by NYSE Regulation would be subject to specific review and approval by the NYSE Regulation board of directors. On a quarterly basis, the staff of NYSE Regulation would provide to the NYSE Regulation Board a report on the amount of fine income received to date during the year and recommendations regarding its proposed use to fund regulatory expenses as above described. The use of the fine income would be subject to NYSE Regulation Board approval. Following each year, the staff of NYSE Regulation would provide the NYSE Regulation Board a report reprising the fines imposed and the utilization of fine income by NYSE Regulation during that year. This report would analyze fines imposed by NYSE Regulation for consistency with precedent from both other NYSE disciplinary cases as well as publicly available disciplinary cases adjudicated by the National Association of Securities Dealers, Inc. and the Commission.

Each year the NYSE Regulation Board would also consider whether unused fine income had accumulated beyond a level reasonably necessary for future contingencies, and could determine to utilize any such excess to fund one or more special projects of NYSE Regulation, to reduce fees charged by NYSE Regulation to its member organizations or the markets that it serves, or for a charitable purpose.

Amendment of the Fine Income Procedures

Effective February 16, 2016, the Delegation Agreement terminated and NYSE Regulation ceased performing regulatory functions on behalf of the Exchange, which has re-integrated its regulatory functions. The ROC of the Exchange's Board of Directors now provides independent oversight of the regulatory function of the Exchange.[10]

In its filing proposing the creation of the ROC and termination of the Delegation Agreement, the Exchange addressed the Fine Income Procedures. Specifically, it "reiterate[ed] [sic] the previous commitments that fines would play no role in the annual regulatory operating budget process and that the use of fine income by Exchange regulatory staff would be subject to review and approval by the proposed ROC."[11] Accordingly, the ROC has assumed the responsibilities previously held by the NYSE Regulation Board.

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[4] *See* Ninth Amended and Restated Operating Agreement of New York Stock Exchange LLC, Art. IV, Sec. 4.05; *see also* Securities Exchange Act Release No. 75991 (September 28, 2015), 80 FR 59837 (October 2, 2015) (SR–NYSE–2015–27) ("NYSE Approval Order"), at 59839.

[5] *See id.* The Archipelago Merger had the effect of "demutualizing" New York Stock Exchange, Inc. by separating equity ownership from trading privileges, and converting it to a for-profit entity. *See* Securities Exchange Act Release No. 53382, 71 FR 11251, 11254 (February 27, 2006) [sic] (SR–NYSE–2005–77) ("Merger Approval Order"). In the resulting re-organization, the Exchange became a wholly-owned subsidiary of NYSE Group, and succeeded to New York Stock Exchange, Inc.'s registration as a national securities exchange under the Exchange Act. *See id.* at 11255.

[6] *See id.* at 11270, note 231. Subject to the requirement to file fees with the Commission, the Exchange determines, assesses, collects and retains certain registration and regulatory fees set forth in its Price List.

[7] *See* Securities Exchange Act Release No. 55216 (January 31, 2007), 72 FR 5779 (February 7, 2007) (NYSE–2006–109) ("Order Approving the Fine Income Procedures").

[8] *See* NYSE Approval Order, *supra* note 4, at 59839. The Exchange's market functions were delegated to NYSE Market (DE). Although the Delegation Agreement set forth the terms under which the Exchange delegated its functions to NYSE Regulation and NYSE Market (DE), the Exchange retained ultimate responsibility for the operations, rules and regulations developed by NYSE Regulation and NYSE Market (DE) and for their enforcement.

[9] *See* Securities Exchange Act Release No. 55003 (December 22, 2006), 71 FR 78497, 78498 (December 29, 2006) (NYSE–2006–109) (the "Proposing Release").

[10] *See* NYSE Approval Order, *supra* note 4, at 59838. Similarly, following termination of the Delegation Agreement, NYSE Market (DE)'s delegated market responsibilities are performed by the Exchange.

[11] *See* Securities Exchange Act Release No. 75288 (June 24, 2015), 80 FR 37316 (June 30, 2015) (SR–NYSE–2015–27), note 25.

Proposed Amendment

The Exchange proposes to delete the Fine Income Procedures from the Exchange rules. The Exchange would remain subject to Section 4.05, which prohibits it from using any regulatory assets or any regulatory fees, fines or penalties collected by the Exchange's regulatory staff for commercial purposes or distributing such assets, fees, fines or penalties to the Exchange's member or any other entity.[12]

In its Order Approving the Fine Income Procedures, the Commission stated that the Fine Income Procedures were "to assure the proper exercise by NYSE Regulation of its power to fine member organizations of the Exchange and the proper use by NYSE Regulation of the funds so collected." [13] The Exchange believes that Section 4.05 and the operating agreement provisions governing the ROC adequately address these concerns.

First, the Exchange believes that limitations on the use of fines is not the most effective way to assure proper exercise by Exchange regulatory staff of the Exchange's power to fine member organizations. Simply put, usage limitations on fine income do not provide oversight of regulatory performance. They just monitor how the resulting income is spent. The Exchange believes that the responsibility to assure proper exercise by Exchange regulatory staff of the Exchange's power to fine member organizations more properly lies with the ROC, which is responsible to oversee the Exchange's regulatory and self-regulatory organization responsibilities and assess the Company's regulatory performance.[14]

In addition, the disciplinary process itself contains a powerful check on the improper exercise by Exchange regulatory staff of the power to fine members and member organizations, specifically the appellate process, whereby adverse hearing panel determinations can be appealed to the Committee for Review, a committee of the Board of Directors of the Exchange that includes independent directors and individuals associated with member organizations of the Exchange, which recommends a disposition to the Board of Directors of the Exchange. Final actions of the Exchange can be appealed to the Commission, and Commission determinations can be challenged in federal court.

Second, the Exchange believes that, by setting clear limitations on its use, Section 4.05 is sufficient to ensure the proper use by the Exchange of fine income. Section 4.05 addresses this concern by prohibiting the use of fines for commercial purposes or distributions. Indeed, because Section 4.05 encompasses all regulatory assets and income, not just fines, it ensures the proper use by the Exchange of a broader range of regulatory funds, by prohibiting their use for commercial purposes or distributions.

The Commission stated in its Order Approving the Fine Income Procedures that it believed the Fine Income Procedures would "guard against the possibility that fines may be assessed to respond to budgetary needs rather than to serve a disciplinary purpose." [15] Section 4.05 also guards against this possibility by limiting the use of fines. However, unlike the Fine Income Procedures, Section 4.05 also guards against the possibility that other regulatory income, such as examination, access, registration, qualification, arbitration, dispute resolution and other regulatory fees, or regulatory assets, could be used or assessed to respond to budgetary needs, by making them unavailable for commercial purposes or distributions. At the same time, the ROC is specifically charged with reviewing the regulatory budget of the Exchange and inquiring into the adequacy of resources available in the budget for regulatory activities.[16] Accordingly, the Exchange believes that removing the Fine Income Procedures and relying on Section 4.05 and the provisions governing the ROC would provide adequate protections against the use of regulatory assets, or assessment of regulatory income, to respond to budgetary needs.

The Exchange believes that the circumstances that led to the Fine Income Procedures no longer exist. At the time the Fine Income Procedures were adopted, a predecessor to Section 4.05 was in effect (the "Predecessor Section"). Indeed, the Commission cited that fact when approving the Archipelago Merger:

> The Commission further notes that the NYSE has taken steps to safeguard the use of regulatory monies. Specifically, New York Stock Exchange LLC will not be permitted to use any assets of, or any regulatory fees, fines, or penalties collected by, NYSE Regulation for commercial purposes or distribute such assets, fees, fines, or penalties to NYSE Group or any entity other than NYSE Regulation.[17]

At the time, NYSE Regulation performed regulatory functions on behalf of the Exchange. On its face, the Predecessor Section, found in the Exchange's 2006 operating agreement, only limited the Exchange itself. NYSE Regulation had the obligation under the Delegation Agreement to assure compliance with the rules of the Exchange, but the Fine Income Procedures provided a more direct commitment by NYSE Regulation to ensure the proper exercise of NYSE Regulation's power to fine member organizations and the proper use by NYSE Regulation of fines collected.

Today, because the Delegation Agreement is no longer in effect, the same entity that fines member organizations is directly subject to the limits of Section 4.05. Accordingly, the Exchange believes that removing the Fine Income Procedures and relying on Section 4.05 and the provisions governing the ROC would provide adequate protections against the concerns cited by the Commission in the Order Approving the Fine Income Procedures. Indeed, as pointed out above, Section 4.05 is wider in scope than the Fine Income Procedures, and so limits the Exchange's use of all regulatory assets and income, not just fine income.

The proposed change would have the benefit of bringing the Exchange's restrictions on the use of regulatory assets and income into greater conformity with those of its affiliates NYSE MKT LLC and NYSE Arca, Inc. NYSE MKT LLC has substantially the same provision as Section 4.05 its operating agreement.[18] The bylaws of NYSE Arca, Inc. also preclude the use of regulatory fees and penalties for commercial operations or dividends, limiting their use to funding legal, regulatory and surveillance operations.[19]

In addition, removing the Fine Income Procedures from its rules would make the Exchange's rules more consistent with the limitations on the use of regulatory assets and income of other SROs. Indeed, no other SRO limits the use of fine income to extra-budgetary use or subjects the use of fine income to specific review and approval by a regulatory oversight committee or any other body. Rather, other SROs' limitations on the use of regulatory funds are generally similar to Section 4.05, in that they provide that regulatory funds shall be used to fund the relevant SRO's legal, regulatory and (in some cases) surveillance operations, and shall not be used to make a distribution to the SRO's member or stockholder, as the case may be.

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[12] All fine monies previously collected would remain subject to the restrictions in Section 4.05.

[13] Order Approving the Fine Income Procedures, *supra* note 7, at 5779.

[14] *See* Ninth Amended and Restated Operating Agreement of New York Stock Exchange LLC, Art. II, Sec. 2.03(h)(ii). The ROC is made up entirely of independent directors of the Exchange.

[15] Order Approving the Fine Income Procedures, *supra* note 7, at 5780.

[16] *See* note 14, *supra*.

[17] *See* Merger Approval Order, *supra* note 5, at 11263.

[18] *See* Eighth Amended and Restated Operating Agreement of NYSE MKT LLC, Art. IV, Sec. 4.05 ("The Company shall not use any regulatory assets or any regulatory fees, fines or penalties collected by Exchange regulatory staff for commercial purposes or distribute such assets, fees, fines or penalties to the Member or any other entity.").

[19] *See* Bylaws of NYSE Arca, Inc., Art. II, Sec. 2.06 ("Any revenues received by the Exchange from regulatory fees or regulatory penalties will be applied to fund the legal, regulatory and surveillance operations of the Exchange and will not be used to pay dividends. For purposes of this Section, regulatory penalties shall include restitution and disgorgement of funds intended for customers.").

For example, the limited liability company agreement of the BOX Options Exchange ("BOX") provides that regulatory funds shall be used to the [sic] fund legal, regulatory and surveillance operations of BOX, and BOX shall not make any distribution to members using regulatory funds. BOX defines "regulatory funds" to include fees, fines or penalties derived from its regulatory operations.[20] Similarly, the limited liability company agreements of International Securities Exchange, LLC, and its affiliates ISE Gemini, LLC and ISE Mercury, LLC provide that regulatory funds shall not be used for non-regulatory purposes, but rather shall be used to fund legal, regulatory and surveillance operations, and the SRO shall not make any distribution to its member using regulatory funds.[21]

Section 4.05 is more restrictive than the provisions of some other SROs, whose rules allow the use of regulatory funds for restitution and disgorgement of funds intended for customers. For example, the governing documents of affiliates BATS BZX Exchange, Inc., BATS BYX Exchange, Inc., BATS EDGX Exchange, Inc., and EDGA Exchange, Inc. provide that revenues received from fees derived from the regulatory function or regulatory penalties may be used to pay restitution and disgorgement of funds intended for customers, as well as to fund legal and regulatory operations, including surveillance and enforcement activities. Such funds may not be used for non-regulatory purposes or distributed to the stockholder.[22] The limited liability company agreement of Miami International Securities Exchange, LLC, and bylaws of National Stock Exchange, Inc., have similar provisions.[23]

The limitations imposed on the NASDAQ Stock Market LLC ("Nasdaq") in its operating agreement are also less restrictive than the limitations imposed on the Exchange by Section 4.05. They simply limit Nasdaq from making a distribution to its member using regulatory funds. "Regulatory funds" is defined to mean fees, fines, or penalties derived from the regulatory operations of Nasdaq.[24] When the NASDAQ OMX Group, Inc. acquired the Boston Stock Exchange ("BSE"), the BSE by-laws were amended to include a similar provision that dividends could not be paid to the stockholders using regulatory funds, also defined as fees, fines, or penalties derived from regulatory operations.[25] The Commission described the provision as "intended to preclude BSE from using its authority to raise regulatory funds for the purpose of benefiting its shareholders, or for other non-regulatory purposes, such as executive compensation."[26] The Exchange believes that Section 4.05, which is more expansive in its scope, meets the same goal.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act[27] in general, and Section 6(b)(1)[28] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. Deletion of the Fine Income Procedures would not diminish the Exchange's ability to adequately ensure the proper exercise of the Exchange's power to fine member organizations and the proper use by the Exchange of the funds collected through the disciplinary process.

The Exchange believes that Section 4.05 and the operating agreement provisions governing the ROC adequately address the concerns underlying adoption of the Fine Income Procedures, rendering the Fine Income Procedures superfluous. First, the Fine Income Procedures cannot assure the proper exercise by Exchange regulatory staff of the Exchange's power to fine member organizations of the Exchange, as usage limitations on fine income do not provide oversight of regulatory performance. The responsibility more properly lies with the ROC, which is responsible for overseeing the Exchange's regulatory and self-regulatory organization responsibilities and assessing its regulatory performance, including reviewing the regulatory budget and inquiring into the adequacy of resources available in the budget for regulatory activities.[29] In addition, the disciplinary process itself contains a powerful check on the improper exercise by Exchange regulatory staff of the power to fine members and member organizations, specifically, the appellate process, whereby adverse hearing panel determinations can be appealed to the Committee for Review, which recommends a disposition to the Board of Directors of the Exchange. Final actions of the Exchange can be appealed to the Commission, and Commission determinations can be challenged in federal court. Second, by setting clear imitations [sic] on its use, Section 4.05 is not only sufficient to ensure the proper use by the Exchange of fine income but also, because it encompasses all regulatory assets and income, ensures the proper use by the Exchange of a broader range of regulatory funds, by prohibiting their use for commercial purposes or distributions.

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[20] *See* Box Options Exchange Limited Liability Company Agreement, Art. 1, Sec. 1.1 and Art. 8, Sec. 8.1. The definition also states that "Regulatory Funds shall not include revenues derived from listing 6 A/72816686.20 [sic] fees, market data revenues, transaction revenues or any other aspect of the commercial operations of the Exchange or a facility of the Exchange, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Exchange." *Id.*

[21] Such agreements define "Regulatory Funds" to mean "fees, fines or penalties derived from the regulatory operations of the Company, provided that Regulatory Funds shall not include revenues derived from listing fees, market data revenues, transaction revenues or any other aspect of the commercial operations of the Company or a facility of the Company, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Company." *See* Third Amended and Restated Limited Liability Company Agreement of International Securities Exchange, LLC, Art. III, Sec. 3.3(ii); Second Amended and Restated Limited Liability Company Agreement of ISE Gemini, LLC, Art. III, Sec. 3.3(ii); and Limited Liability Company Agreement of ISE Mercury, LLC, Art. III, Sec. 3.3(ii).

[22] *See* Fourth Amended and Restated Bylaws of BATS BZX Exchange, Inc., Art. X, Sec. 4; Fourth Amended and Restated Bylaws of BATS BYX Exchange, Inc., Art. X, Sec. 4; Fifth Amended and Restated Bylaws of BATS EDGX Exchange, Inc., Art. X, Sec. 4; and Fifth Amended and Restated Bylaws of BATS EDGA Exchange, Inc., Art. X, Sec. 4.

[23] *See* Second Amended and Restated Limited Liability Company Agreement of Miami International Securities Exchange, LLC, Art. IX, Sec. 9.4 ("Any Regulatory Funds will not be used for non-regulatory purposes or distributed to the LLC Member, but rather, shall be applied to fund the legal and regulatory operations of the Company (including surveillance and enforcement activities), or, as the case may be, shall be used to pay restitution and disgorgement of funds intended for customers."); Amended and Restated By-laws of National Stock Exchange, Inc., [sic] Art. X, Sec. 10.4 ("Any revenues received by the Exchange from fees derived from its regulatory function or regulatory penalties will not be used to pay dividends and shall be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities), or, as the case may be, shall be used to pay restitution and disgorgement of funds intended for customers."); *see also* Amended and Restated By-Laws of Miami International Securities Exchange, LLC, Art. IX, Sec. 9.4.

[24] *See* Second Amended Limited Liability Company Agreement of The NASDAQ Stock Market LLC, Sec. 15. The definition of Regulatory Funds also states that "'Regulatory Funds' shall not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Company, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Company." *Id,* Sch. A. *See also* by-laws of NASDAQ BX, Inc., Art. IX, Sec. 9.8, and Second Amended Limited Liability Company Agreement of NASDAQ PHLX LLC, Sec. 14.

[25] *See* Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE– 2008–02; SR–BSE–2008–23; SR–BSE–2008– 25; SR–BSECC–2008–01), at 46942.

[26] *See* Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE– 2008–02; SR–BSE–2008–23; SR–BSE–2008– 25; SR–BSECC–2008–01), at 46942.

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(1).

[29] *See* note 14, *supra.*

Finally, the Exchange believes that Section 4.05 and the operating agreement provisions governing the ROC would provide adequate protections against the assessment of regulatory income, or the use of regulatory assets, to respond to budgetary needs. By limiting their use, Section 4.05 guards against the possibility that fines may be assessed to respond to budgetary needs rather than to serve a disciplinary purpose. However, unlike the Fine Income Procedures, Section 4.05 also guards against the possibility that other regulatory income, such as examination, access, registration, qualification, arbitration, dispute resolution and other regulatory fees, or regulatory assets, could be used or assessed to respond to budgetary needs, by making them unavailable for commercial purposes or distributions.

For the same reasons, the Exchange believes that the proposed deletion of the Fine Income Procedures is consistent with Section 6(b)(4),[30] which requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among the exchange's members and issuers and other persons using its facilities, and Section 6(b)(5),[31] which requires that the rules of the exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. As noted, the Exchange believes that the responsibility to assure the proper exercise by Exchange regulatory staff of the Exchange's power to fine member organizations more properly lies with the ROC, and that, by setting clear imitations [sic] on its use, Section 4.05 is not only sufficient to ensure the proper use by the Exchange of fine income but also, because it encompasses all regulatory assets and income, ensures the proper use by the Exchange of a broader range of regulatory funds, by prohibiting their use for commercial purposes or distributions. Finally, the Exchange believes that Section 4.05 and the operating agreement provisions governing the ROC would provide adequate protections against the assessment of regulatory income, or the use of regulatory assets, to respond to budgetary needs. Section 4.05 not only guards against the possibility that fines may be assessed to respond to budgetary needs rather than to serve a disciplinary purpose, but also guards against the possibility that other regulatory income or regulatory assets could be used or assessed in that manner, by making them unavailable for commercial purposes or distributions.

The Exchange believes that the proposed deletion of the Fine Income Procedures is consistent with the Exchange's present governance structure, centered on a ROC. Today, because the Delegation Agreement is no longer in effect, the same entity that fines member organizations is directly subject to the limits of Section 4.05. Accordingly, the proposed deletion is consistent with ensuring that the Exchange is so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange notes that the proposed change would have the additional benefit of making the Exchange's rules more consistent with the limitations on the use of regulatory assets and income of other SROs and bringing the Exchange's restrictions on the use of regulatory assets and income into greater conformity with those of its affiliates NYSE MKT LLC and NYSE Arca, Inc. Indeed, no other SRO limits the use of fine income to extra-budgetary use or subjects the use of fine income to specific review and approval by a regulatory oversight committee or any other body.[32] Rather, other SROs' limitations on the use of regulatory funds are generally similar to Section 4.05, in that they provide that regulatory funds shall be used to fund the relevant SRO's legal, regulatory and (in some cases) surveillance operations, and shall not be used to make a distribution to the SRO's member or stockholder, as the case may be. In fact, Section 4.05 is more restrictive than the provisions of some other SROs, whose rules allow the use of regulatory funds for restitution and disgorgement of funds intended for customers, or simply limit the SRO from making a distribution to its member using regulatory funds.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the administration and functioning of the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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[30] 15 U.S.C. 78f(b)(4).

[31] 15 U.S.C. 78f(b)(5).

[32] *See* notes 20–25 [sic] and accompanying text.

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2016–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–37. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–37, and should be submitted on or before June 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–12673 Filed 5–27–16; 8:45 am]

BILLING CODE 8011–01–P

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[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77889; File No. SR–BatsEDGA–2016–09]

Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Change to the Market Data Section of its Fee Schedule

May 24, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 2016, Bats EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Market Data section of its fee schedule to: (i) Decrease the User fees for the EDGA Top and EDGA Last Sale feeds; and (ii) amend the New External Distributor Credit for the Bats One Feed.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its fee schedule to: (i) Decrease the User fees for the EDGA Top and EDGA Last Sale feeds; and (ii) amend the New External Distributor Credit for the Bats One Feed.

EDGA Top and Last Sale Fees

EDGA Top is a market data feed that includes top of book quotations and execution information for all equity securities traded on the Exchange.[5] EDGA Last Sale is a market data feed that includes last sale information for all equity securities traded on Exchange.[6] The Exchange proposes to decrease the User fees for the EDGA Top and EDGA Last Sale feeds.[7]

The Exchange does not currently charge an External Distributor[8] of EDGA Last Sale or EDGA Top a Distributor fee. The Exchange does, however, charge those who receive either EDGA Top or EDGA Last Sale from External Distributors different fees for both their Professional[9] and Non-Professional[10]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Exchange Rule 13.8(c).

[6] *See* Exchange Rule 13.8(d).

[7] The Exchange notes that Bats BYX Exchange, Inc. ("BYX") and Bats EDGX Exchange, Inc. ("EDGX") also filed proposed rule changes with Commission to amend similar fees for their respective Top and Last Sale market data products. *See* File Nos. SR-BatsBYX–2016–08 and SR-BatsEDGX–2016–18. The Exchange represents that the proposed fees will continue to not cause the combined cost of subscribing to EDGX, EDGA, BYX, and Bats BZX Exchange Inc.'s ("BZX") individual Top and Last Sale feeds to be greater than those currently charged to subscribe to the Bats One Feed. *See* Securities Exchange Act Release Nos. 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR–BATS–2015–11); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR–EDGA–2015–09); 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR–EDGX–2015–09); *and* 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR–BYX–2015–09) ("Initial Bats One Feed Fee Filings"). In these filings, the Exchange represented that the cost of subscribing to each of the underlying individual feeds necessary to create the Bats One Feed would not be greater than the cost of subscribing to the Bats One Feed. *Id.*

[8] An "External Distributor" of an Exchange Market Data product is defined as "a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity." *See* the Exchange Fee Schedule *available at http://batstrading.com/support/fee_schedule/edga/.*

[9] A "Professional User" is defined as "any User other than a Non-Professional User." *See* the Exchange Fee Schedule *available at http://batstrading.com/support/fee_schedule/edga/.*

[10] A "Non-Professional User" is defined as "a natural person who is not: (i) registered or qualified in any capacity with the Commission, the

Users. The Exchange currently assesses a monthly fee for Professional Users of $2.00 per User. Non-Professional Users are assessed a monthly fee of $0.05 per User. The Exchange now proposes to decrease the Professional User fee to $1.00 per User per month and the Non-Professional User fee to $0.025 per User per month.

Bats One Feed

In sum, the Bats One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer ("BBO") of all displayed orders for securities traded on EDGA and its affiliated exchanges and for which the Bats Exchanges report quotes under the Consolidated Tape Association ("CTA") Plan or the Nasdaq/UTP Plan. The Bats One Feed also contains the individual last sale information for the Bats Exchanges (collectively with the aggregate BBO, the "Bats One Summary Feed"). In addition, the Bats One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Bats Exchanges for up to five (5) price levels ("Bats One Premium Feed").[11]

The Exchange charges External Distributors of the Bats One Summary Feed a monthly Distribution fee of $5,000. The Exchange also offers a New External Distributor Credit under which new External Distributors of the Bats One Feed will not be charged a Distributor Fee for their first three (3) months in order to allow them to enlist new Users to receive the Bats One Summary Feed. The Exchange now proposes to decrease the time a new External Distributor of the Bats One Feed will not be charged a Distributor Fee from their first three (3) months to their first one (1) month.[12]

Implementation Date

The Exchange proposes to implement the proposed changes to its fee schedule on June 1, 2016.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[13] in general, and furthers the objectives of Section 6(b)(4),[14] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients. Lastly, the Exchange also believes that the proposed fees are reasonable and non-discriminatory because they will apply uniformly to all recipients of Exchange data.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [15] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[16] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors will be subject to the proposed fees on an equivalent basis. EDGA Last Sale, EDGA Top and the Bats One Feed are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. The Exchange also believes the proposed decrease to the External Distribution fees for EDGA Last Sale and EDGA Top are reasonable and equitable in light of the continued benefits to data recipients. To the extent consumers do purchase the data products, the revenue generated will continue to offset the Exchange's fixed costs of operating and regulating a highly efficient and reliable platform for the trading of U.S. equities. It will also help the Exchange to continue to cover its costs in developing and running that platform, as well as ongoing infrastructure costs. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data feeds. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to EDGA Top, EDGA Last Sale, and the Bats One Feed further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives because the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute EDGA Top, EDGA Last Sale, or the Bats One Feed, prospective Users likely would not subscribe to, or would cease subscribing to, the EDGA Top, EDGA Last Sale, or the Bats One Feed.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would

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Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt." *Id.*

[11] *See* Exchange Rule 13.8(b). *See also* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) ("Bats One Approval Order").

[12] The Exchange notes that New External Distributor Credit will continue to be available for three (3) months to those Distributors who began to distribute the Bats One Summary Feed prior to June 1, 2016.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78k–1.

[16] *See* 17 CFR 242.603.

be so complicated that it could not be done practically.[17]

The Exchange believes the proposed Professional and Non-Professional User fees for EDGA Top and EDGA Last Sale are equitable and reasonable because they will continue to result in greater availability to Professional and Non-Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. In addition, the proposed fees are reasonable when compared to similar fees for comparable products offered by the NYSE. Specifically, NYSE offers NYSE BBO, which includes best bid and offer for NYSE traded securities, for a monthly fee of $4.00 per professional subscriber and $0.20 per non-professional subscriber.[18] NYSE also offers NYSE Trades, which is a data feed that provides the last sale information for NYSE traded securities, for the same price as NYSE BBO. The Exchange's proposed per User Fees for EDGA Top and EDGA Last Sale are less than the NYSE's fees for NYSE Trades and NYSE BBO.

The Exchange also believes that amending the New External Distributor Credit for the Bats One Feed is equitable and reasonable. The Exchange notes that the New External Distributor Credit was initially adopted at the time the Exchange began to offer the Bats One Summary Feed to subscribers. It was intended to incentivize new Distributors to enlist Users to subscribe to the Bats One Summary Feed in an effort to broaden the product's distribution. The Exchange also believes that decreasing the time during which the New External Distributor Credit is available from three (3) to one (1) month for the Bats One Feed is equitable and reasonable because the credit has been available to Distributors since January 2015 providing new Distributors with ample time to grow their subscriber bases during the available three (3) month period. Decreasing the credit period to one (1) month is equitable and reasonable as it would continue to provide new Distributors ample time to grow their subscriber bases.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price EDGA Last Sale, EDGA Top, and the Bats One Feed are constrained by: (i) Competition among exchanges, other trading platforms, and Trade Reporting Facilities ("TRF") that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data. This competitive pressure is evidenced by the Exchange's proposal to decrease fees as described herein.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, EDGA Last Sale, EDGA Top, and the Bats One Feed compete with a number of alternative products. For instance, EDGA Last Sale, EDGA Top, and the Bats One Feed do not provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and Electronic Communication Networks ("ECN") that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce last sale information products, and many currently do, including Nasdaq and NYSE. In addition, market participants can gain access to EDGA last sale prices and top-of-book quotations, though integrated with the prices of other markets, on feeds made available through the SIPs.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on the Exchange's data products and the Exchange's compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to EDGA Last Sale, EDGA Top, and the Bats One Feed, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and paragraph (f) of Rule 19b–4 thereunder.[20] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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[17] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm. See also* Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR–NYSE–2014–64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

[18] *See* NYSE Market Data Pricing dated March 2016 *available at http://www.nyxdata.com/.*

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–BatsEDGA–2016–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BatsEDGA–2016–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BatsEDGA–2016–09, and should be submitted on or before June 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–12666 Filed 5–27–16; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77897; File No. SR–NYSEArca–2016–73]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 6.43 Regarding Definition of Floor Broker

May 24, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 17, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.43 (Options Floor Broker Defined). The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.43 to update the definition of Floor Broker.[4] The proposed rule change would harmonize the Floor Broker definition with the recently updated rule of another competing options exchange—specifically NASDAQ OMX PHLX LLC ("PHLX").[5]

Rule 6.43(a) defines a Floor Broker as "an individual (either an OTP Holder or OTP Firm or a nominee of an OTP Holder or OTP Firm) who is registered with the Exchange for the purpose, while on the Exchange Floor, of accepting and executing option orders received from OTP Holders and OTP Firms [each an "OTP"]." The Rule further provides that "[a] Floor Broker shall not accept an order from any other source unless he has registered his individual for an [OTP] approved to transact business with the public in accordance with Rule 9, in which event he may accept orders for public customers of the [OTP]."

The Exchange notes that Floor Brokers, as registered Broker/Dealers[6], have long handled orders from Broker/Dealers who may not be OTPs. In addition, Floor Brokers may accept orders from non-Broker/Dealers (*i.e.*, public customers).[7] Thus, the Exchange proposes to clarify Rule 6.43(a) by removing the language regarding the types of market participants from whom a Floor Broker may accept an order.[8] The updated rule would provide that a

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[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange notes that, other than changes to the format or terms used in the rule, the definition of Floor Broker has remained unchanged since 2001. *See* Securities Exchange Act Release No. 44790 (September 13, 2001) 66 FR 48502 (September 20, 2001) (SR–PCX–2001–26) (relating to accepting orders from Professional Customers).

[5] *See* Securities Exchange Act Release No. 76800 (December 30, 2015), 81 FR 549, (January 6, 2016) (SR-Phlx-2015–114) (adopting updated definition of Floor Broker in PHLX Rule 1060 on immediately effective basis).

[6] *See* Rule 6.43(a).

[7] To handle the orders of public customers, Floor Brokers must be properly qualified to do business with the public, per Rule 9 (Conducting Business With The Public), generally, and Rule 9.18 (Doing a Public Business in Options), specifically.

[8] *See* proposed Rule 6.43(a). This practice is consistent with the rules of other exchanges. *See, e.g., supra* n. 5 (PHLX Rule 1060) and CBOE Rule 6.70 (permitting CBOE Floor Brokers to accept orders from non-member broker-dealers).

Floor Broker is an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders.[9] Further, as proposed, a Floor Broker may accept orders from OTPs, Broker Dealers that are non-OTPs, Professional Customers, pursuant to Rule 6.43(b), as well as from public customers provided the Floor Broker is properly qualified to do business with the public.[10]

This proposed rule change would reflect current practice on the Exchange, specifically that a Floor Broker may accept orders from Broker Dealers that are not OTPs. The proposed modification would not alter a Floor Broker's responsibilities. Further, the proposal would have no impact on a Floor Broker's ability to accept orders from the public.[11]

2. Statutory Basis

The Exchange believes that the proposed change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5),[13] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that the proposal is designed to remove language that could be interpreted as a limitation on orders that may be accepted by Floor Brokers to reflect current practice on the Exchange, which would promote just and equitable principles of trade, and remove impediments to, and perfect the mechanism of a free and open market. The proposed change would make clear to market participants that a Floor Broker may accept an order from a non-OTP that is a Broker Dealer, which adds clarity and transparency to Exchange rules to the benefit of all market participants. Thus, the Exchange believes that the proposal would help prevent confusion and help ensure that floor brokerage services are widely available to various types of market participants, which should, in turn, promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. With respect to inter-market competition, the proposed rule change is a competitive change that is substantially similar to rules in place at another competing options exchange.[14] With respect to intra-market competition, the proposal applies to all NYSE Arca Floor Brokers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[17]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–73 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–73. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–73, and should be submitted on or before June 21, 2016.

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[9] Consistent with the proposed changes to Rule 6.43(a), the Exchange proposes to delete the cross reference to this section from Rule 6.43(b)(1). *See* proposed Rule 6.43(b)(1).

[10] *See supra* n. 7.

[11] *See id.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See supra* n. 5.

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–12671 Filed 5–27–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–292, OMB Control No. 3235–0330]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Form N–SAR.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Form N–SAR (OMB Control No. 3235–0330, 17 CFR 249.330) is the form used by all registered investment companies with the exception of face amount certificate companies, to comply with the periodic filing and disclosure requirements imposed by Section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) ("Investment Company Act"), and of rules 30a–1 and 30b1–1 thereunder (17 CFR 270.30a–1 and 17 CFR 270.30b1–1). The information required to be filed with the Commission assures the public availability of the information and permits verification of compliance with Investment Company Act requirements. Registered unit investment trusts are required to provide this information on an annual report filed with the Commission on Form N–SAR pursuant to rule 30a–1 under the Investment Company Act, and registered management investment companies must submit the required information on a semi-annual report on Form N–SAR pursuant to rule 30b1–1 under the Investment Company Act.

The Commission estimates that the total number of respondents is 3,168 and the total annual number of responses is 5,564 ((2,396 management investment company respondents × 2 responses per year) + (772 unit investment trust respondents × 1 response per year)). The Commission estimates that each registrant filing a report on Form N–SAR would spend, on average, approximately 14.21 hours in preparing and filing reports on Form N–SAR and that the total hour burden for all filings on Form N–SAR would be 79,064 hours.

The collection of information under Form N–SAR is mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: May 24, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–12674 Filed 5–27–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–464, OMB Control No. 3235–0527]

Submission for OMB Review; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 7d–2.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension and approval of the collection of information discussed below.

In Canada, as in the United States, individuals can invest a portion of their earnings in tax-deferred retirement savings accounts ("Canadian retirement accounts"). These accounts, which operate in a manner similar to individual retirement accounts in the United States, encourage retirement savings by permitting savings on a tax-deferred basis. Individuals who establish Canadian retirement accounts while living and working in Canada and who later move to the United States ("Canadian-U.S. Participants" or "participants") often continue to hold their retirement assets in their Canadian retirement accounts rather than prematurely withdrawing (or "cashing out") those assets, which would result in immediate taxation in Canada.

Once in the United States, however, these participants historically have been unable to manage their Canadian retirement account investments. Most investment companies ("funds") that are "qualified companies" for Canadian retirement accounts are not registered under the U.S. securities laws. Securities of those unregistered funds, therefore, generally cannot be publicly offered and sold in the United States without violating the registration requirement of the Investment Company Act of 1940 ("Investment Company Act").[1] As a result of this registration requirement, Canadian-U.S. Participants previously were not able to purchase or exchange securities for their Canadian retirement accounts as needed to meet their changing investment goals or income needs.

The Commission issued a rulemaking in 2000 that enabled Canadian-U.S. Participants to manage the assets in their Canadian retirement accounts by providing relief from the U.S. registration requirements for offers of securities of foreign issuers to Canadian-U.S. Participants and sales to Canadian retirement accounts.[2] Rule 7d–2 under the Investment Company Act[3] permits foreign funds to offer securities to Canadian-U.S. Participants and sell securities to Canadian retirement accounts without registering as investment companies under the Investment Company Act.

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[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 80a. In addition, the offering and selling of securities that are not registered pursuant to the Securities Act of 1933 ("Securities Act") is generally prohibited by U.S. securities laws. 15 U.S.C. 77.

[2] *See* Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts, Release Nos. 33–7860, 34–42905, IC–24491 (June 7, 2000) [65 FR 37672 (June 15, 2000)]. This rulemaking also included new rule 237 under the Securities Act, permitting securities of foreign issuers to be offered to Canadian-U.S. Participants and sold to Canadian retirement accounts without being registered under the Securities Act. 17 CFR 230.237.

[3] 17 CFR 270.7d–2.

Rule 7d–2 contains a "collection of information" requirement within the meaning of the Paperwork Reduction Act of 1995.[4] Rule 7d–2 requires written offering materials for securities offered or sold in reliance on that rule to disclose prominently that those securities and the fund issuing those securities are not registered with the Commission, and that those securities and the fund issuing those securities are exempt from registration under U.S. securities laws. Rule 7d–2 does not require any documents to be filed with the Commission.

Rule 7d–2 requires written offering documents for securities offered or sold in reliance on the rule to disclose prominently that the securities are not registered with the Commission and may not be offered or sold in the United States unless registered or exempt from registration under the U.S. securities laws, and also to disclose prominently that the fund that issued the securities is not registered with the Commission. The burden under the rule associated with adding this disclosure to written offering documents is minimal and is non-recurring. The foreign issuer, underwriter, or broker-dealer can redraft an existing prospectus or other written offering material to add this disclosure statement, or may draft a sticker or supplement containing this disclosure to be added to existing offering materials. In either case, based on discussions with representatives of the Canadian fund industry, the staff estimates that it would take an average of 10 minutes per document to draft the requisite disclosure statement.

The staff estimates that there are 3164 publicly offered Canadian funds that potentially would rely on the rule to offer securities to participants and sell securities to their Canadian retirement accounts without registering under the Investment Company Act.[5] The staff estimates that all of these funds have previously relied upon the rule and have already made the one-time change to their offering documents required to rely on the rule. The staff estimates that 158 (5 percent) additional Canadian funds would newly rely on the rule each year to offer securities to Canadian-U.S. Participants and sell securities to their Canadian retirement accounts, thus incurring the paperwork burden required under the rule. The staff estimates that each of those funds, on average, distributes 3 different written offering documents concerning those securities, for a total of 474 offering documents. The staff therefore estimates that 158 respondents would make 474 responses by adding the new disclosure statement to 474 written offering documents. The staff therefore estimates that the annual burden associated with the rule 7d–2 disclosure requirement would be 79 hours (474 offering documents × 10 minutes per document). The total annual cost of these burden hours is estimated to be $30,020 (79 hours × $380 per hour of attorney time).[6]

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or send an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: May 24, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–12675 Filed 5–27–16; 8:45 am]

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[4] 44 U.S.C. 3501–3502.

[5] Investment Company Institute, 2015 Investment Company Fact Book (2015) at 238, tbl. 66.

[6] The Commission's estimate concerning the wage rate for attorney time is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"). The $380 per hour figure for an attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77898; File No. SR–NYSEArca–2016–11]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Amending Section 4.01(a) of the NYSE Arca's Bylaws and NYSE Arca Rule 3.3 to Establish a Committee for Review as a Sub-Committee of the ROC and Making Conforming Changes to NYSE Arca Rules

May 24, 2016.

I. Introduction

On March 24, 2016, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend Section 4.01(a) of the Bylaws of the Exchange and to amend various rules of the Exchange, as described below. On April 4, 2016, the Exchange filed Amendment No. 1 to its proposal.[4] The proposed rule change, as modified by the amendment thereto, was published for comment in the **Federal Register** on April 12, 2016.[5] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change, as modified by the amendment thereto.

II. Description of the Proposal

As part of a regulatory restructuring, NYSE Arca proposes to: (i) Amend Section 4.01(a) of the NYSE Arca's Bylaws and NYSE Arca Rule 3.3 to establish a Committee for Review as a subcommittee of the Regulatory Oversight Committee ("ROC")[6] and delete NYSE Arca Rule 3.2(b)(3) governing the OTP Advisory Committee and NYSE Arca Equities, Inc.[7] ("NYSE Arca Equities") Rule 3.2(b)(3) governing the Member Advisory Committee, both of whose functions would be assumed by the Committee for Review, and make conforming changes to NYSE Arca Rules 2.4, 10.3, 10.6, 10.8, 10.11, 10.12, 10.14 and NYSE Arca Equities Rules 2.3, 3.3, 5.5, 10.3, 10.6, 10.8, 10.11, 10.12, and 10.13; (ii) delete references to "NYSE Regulation, Inc." and "NYSE Regulation" [8] in NYSE Arca Rule 0 and NYSE Arca Equities Rule 0 and NYSE Arca Equities Rule 5.3(i)(1); (iii) replace a reference to the "NYSE Regulation, Inc. Chief Executive Officer" in NYSE Arca Equities Rule 2.100; and (iv) make certain technical and non-substantive changes.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Amendment No. 1 amended and replaced the original filing in its entirety. In Amendment No. 1, the Exchange, among other things, deleted language in the description of the proposed rule change that was not relevant to the proposed rule change.

[5] *See* Securities Exchange Act Release No. 77535 (April 6, 2016), 81 FR 21615 ("Notice").

[6] The Commission recently approved the Exchange's proposal to establish the ROC as a committee of the Exchange's Board of Directors ("NYSE Arca Board") to be composed solely of

The Exchange proposes that these rule revisions would be operative no later than June 30, 2016, on a date to be determined by the NYSE Arca Board.[9]

A. Establishing a Committee for Review and Conforming Exchange Rules

The Exchange proposes to establish a Committee for Review ("CFR") as a subcommittee of the ROC by amending Section 4.01(a) (Committees of the Board) of the NYSE Arca's Bylaws and NYSE Arca Rule 3.3 (Board Committees), deleting NYSE Arca Rule 3.2(b)(3) (Options Committees) and NYSE Arca Equities Rule 3.2(b)(3) (Equity Committees), and making conforming changes to NYSE Arca Rules 2.4, 10.3, 10.6, 10.8, 10.11, 10.12, 10.14 and NYSE Arca Equities Rules 2.3, 3.3, 5.5, 10.3, 10.6, 10.8, 10.11, 10.12, and 10.13.[10] The proposed CFR would be the successor to the current NYSE Arca Board Appeals Committee ("NYSE Arca BAC") and the NYSE Arca Equities Board Appeals Committee ("NYSE Arca Equities BAC"), which are committees of the NYSE Arca Board and NYSE Arca Equities Board of Directors, respectively, that review appeals of Exchange disciplinary actions regarding options and equities matters, respectively.[11] The Exchange represents that by creating a single CFR, the Exchange's appellate process would be consistent with the processes of its affiliates, the NYSE and NYSE MKT LLC ("NYSE MKT"), both of which recently established a CFR as a subcommittee of their respective ROCs.[12]

NYSE Arca Rule 3.3(a)(2)(A) would provide that the NYSE Arca Board shall annually appoint a CFR as a subcommittee of the ROC. The Exchange notes that proposed Rule 3.3(a)(2) incorporates member organization association requirements of the current NYSE Arca BAC.[13]

The proposed CFR would be comprised of the OTP Director(s),[14] the ETP Director(s) [15] and the Public Directors [16] of both NYSE Arca and NYSE Arca Equities.[17]

The proposed CFR would be responsible for reviewing the disciplinary decisions on behalf of the NYSE Arca Board and reviewing determinations to limit or prohibit the continued listing of an issuer's securities on NYSE Arca Equities.[18] In addition, the Exchange proposes to incorporate the roles of the OTP Advisory Committee of NYSE Arca and the Member Advisory Committee of NYSE Arca Equities into the proposed CFR.[19] As a result, the proposed CFR also would be charged with acting in an advisory capacity to the NYSE Arca Board with respect to disciplinary matters, the listing and delisting of securities, regulatory programs, rulemaking and regulatory rules, including trading rules. The Exchange states that the proposed CFR would therefore serve in the same advisory capacity as the current OTP Advisory and Member Advisory Committees.[20]

According to the Exchange, member participation on the proposed CFR would be sufficient to provide for the fair representation of members in the administration of the affairs of the Exchange, including rulemaking and the disciplinary process, consistent with Section 6(b)(3) of the Act.[21]

The Exchange further proposes to amend NYSE Arca Rule 3.3(a)(2)(B) and NYSE Arca Equities Rule 3.3(a)(1)(A) to provide that the CFR may, but would not be required to, appoint an appeals panel ("CFR Appeals Panel") to conduct a review thereunder and make a decision regarding the disposition of the appeal.[22] Similar to current appeals panels that can be appointed by the NYSE Arca BAC, a CFR Appeals Panel would consist of at least three and no more than five individuals.[23] The Exchange represents that any CFR Appeals Panel appointed by the CFR for matters related to the equities market would be composed of at least one Public Director and at least one director that is an ETP Holder or Allied Person or Associated Person of an ETP Holder.[24] The Exchange further

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public directors who satisfy the Exchange's Public Director requirements, as set forth in the Exchange's Bylaws. *See* Securities Exchange Act Release No. 75155 (June 11, 2015), 80 FR 34744 (June 17, 2015).

[7] NYSE Arca, a registered securities exchange, operates a marketplace for trading options and, through its wholly-owned subsidiary NYSE Arca Equities, a marketplace for trading equities. *See* Notice, *supra* note 5, at 21615.

[8] NYSE Regulation, Inc. ("NYSE Regulation"), a not-for-profit subsidiary of the Exchange's affiliate New York Stock Exchange LLC ("NYSE"), performed regulatory functions for the Exchange pursuant to an intercompany Regulatory Services Agreement ("RSA") that gave the Exchange the contractual right to review NYSE Regulation's performance. The RSA terminated on February 16, 2016. *See id.* at 21615 n.5.

[9] *See id.* at 21615 n.6.

[10] *See id.* at 21616.

[11] *See id.*

[12] *See* Securities Exchange Act Release No. 75991 (September 28, 2015), 80 FR 59837 (October 2, 2015) (NYSE–2015–27); Securities Exchange Act Release No. 77008 (February 1, 2016), 81 FR 6311 (February 5, 2016) (NYSEMKT 2015–106).

[13] *See* Notice, *supra* note 5, at 21616–17.

[14] The Exchange notes that an "OTP Director" is a director nominated by the Options Trading Permit ("OTP") Holders of the Exchange. *See id.* at 21616 n.13; *see also* Article III, Section 3.02 of the Exchange Bylaws.

[15] The Exchange notes that an "ETP Director" is a director nominated by the Equities Trading Permit ("ETP") Holders of NYSE Arca Equities, Inc. *See id.* at 21616 n.13; *see also* Article III, Section 3.02 of the Exchange Bylaws.

[16] Under the Bylaws of the Exchange, "Public Directors" of the Exchange are directors that are "persons from the public and will not be, or be affiliated with, a broker-dealer in securities or employed by, or involved in any material business relationship with, the Exchange or its affiliates." *See* Section 3.02 of the Exchange Bylaws.

[17] *See* Notice, *supra* note 5, at 21616–17.

[18] The Exchange notes that the NYSE Arca Equities BAC currently has the same mandate to review determinations to limit or prohibit the continued listing of an issuer's securities, but that the NYSE Arca BAC's mandate does not include reviews of delisting determinations. *See id.* at 21616 n.23.

[19] *See id.* at 21618. The Exchange notes that the same profile of members who historically have served on these advisory committees would be represented on the proposed CFR and that the Exchange's affiliates NYSE and NYSE MKT have similar structures in place with respect to their respective CFRs. *See id.*

[20] The Exchange also notes that this proposal is consistent with the structure recently approved for its affiliate, NYSE, which abolished its advisory committees and transferred the functions of to its newly created NYSE CFR, whose mandate includes acting in an advisory capacity to the NYSE board of directors with respect to disciplinary matters, the listing and delisting of securities, regulatory programs, rulemaking and regulatory rules, including trading rules. *See id.*

[21] *See id.* and 15 U.S.C. 78f(b)(3).

[22] The Exchange notes that under current NYSE Arca and NYSE Arca Equities Rules, any decisions by an appeals panel appointed by the NYSE Arca BAC or NYSE Arca Equities BAC are final unless appealed to the NYSE Arca Board or called for review by the NYSE Arca Board. *See id.* at 21617 n.25 and accompanying text. The Exchange proposes that CFR Appeals Panels retain this ability to resolve appeals and therefore does not propose that a CFR Appeals Panel would make recommendations to the CFR, as is the case with appellate panels for the Exchange's affiliate NYSE MKT, which it notes did not previously have appellate panels. *See id.*

[23] *See id.* at 21617. The Exchange notes that NYSE Arca Equities Rule 3.3(a)(1) currently provides that the NYSE Arca Equities Board determines the size of any "Appeals Committee" it creates. *See id.* at 21617 n.29.

[24] *See id.* at 21617.

represents that any CFR Appeals Panel appointed by the CFR for matters related to the options market would be composed of at least one Public Director and at least one Director that is an OTP Holder or Allied Person or Associated Person of an OTP Firm.[25] According to the Exchange, participation on the proposed CFR Appeals Panels of permit holders and persons allied or associated with permit holders would be sufficient to provide for the fair representation of members in the administration of the affairs of the Exchange, including rulemaking and the disciplinary process, consistent with Section 6(b)(3) of the Act.[26]

The Exchange proposes to make conforming amendments to Article IV, Section 4.01(a) of its Bylaws governing board committees by replacing references to the "Board Appeals Committee" with references to the "Committee for Review as a subcommittee of the Regulatory Oversight Committee" and "its subcommittee, the CFR." The Exchange also proposes to make conforming amendments to NYSE Arca Rules 2.4, 10.3, 10.6, 10.8, 10.11, 10.12, 10.14 and NYSE Arca Equities Rules 2.3, 5.5, 10.3, 10.6, 10.8, 10.11, 10.12, and 10.13 by generally replacing references to the current NYSE Arca BAC and NYSE Arca Equities BAC with references to the "Committee for Review" or "CFR" and to replace references to the "Appeals Panel" with the "CFR Appeals Panel." [27]

B. Modifying Exchange Rules To Delete References to NYSE Regulation

The Exchange proposes in connection with the its termination of the intercompany RSA pursuant to which NYSE Regulation provided regulatory services to the Exchange, to amend NYSE Arca Rule 0 (Regulation of the Exchange, OTP Holders and OTP Firms) and NYSE Arca Equities Rule 0 (Regulation of the Exchange and Exchange Trading Permit Holders) to delete references to "NYSE Regulation, Inc." and "NYSE Regulation staff or departments," and NYSE Arca Equities Rule 5.3(i)(1) (Financial Reports and Related Notices) to delete the reference to "NYSE Regulation" and to replace such reference with "regulatory staff." [28]

C. Modifying Exchange Rules To Reference the Exchange's Chief Regulatory Officer

The Exchange proposes to amend NYSE Arca Equities Rule 2.100 (Emergency Powers) to replace a reference to "NYSE Regulation, Inc. Chief Executive Officer" with "Chief Regulatory Officer."

D. Certain Technical and Non-Substantive Changes

The Exchange proposes to make certain technical and non-substantive changes to amend NYSE Arca Rules 0 and 10.8, and NYSE Arca Equities Rules 10.3, 10.12, and 10.13.

The Exchange proposes to delete the semi-colon at the end of the heading of NYSE Arca Rule 0; to make grammatical corrections to NYSE Arca Rule 10.8; to replace outdated references to the NYSE Arca Board of Governors in NYSE Arca Equities Rules 10.3, 10.12 and 10.13 with references to the "NYSE Arca Board of Directors"; and to amend the heading of NYSE Arca Equities Rule 10.13 to delete the reference to "the Corporation." [29]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[30] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act, which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the rules of the exchange.[31] The Commission finds that the proposal also is consistent with the requirements of Section 6(b)(3) of the Act, which provides that the rules of an exchange must assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.[32] In addition, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act, which requires that the rules of the exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[33] Finally, the Commission finds that the proposal is consistent with Section 6(b)(7) of the Act, which requires that the rules of the exchange provide a fair procedure for the disciplining of its members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the exchange with respect to access to services offered by the exchange or a member thereof.[34]

The Exchange represents that the proposed single CFR would be a successor to both the current NYSE Arca BAC and NYSE Arca Equities BAC, which are committees of the NYSE Arca Board and NYSE Arca Equities Board of Directors, respectively, that review appeals of Exchange disciplinary actions in their respective markets.[35] The Exchange also proposes to incorporate the responsibilities of the OTP Advisory Committee of NYSE Arca and the Member Advisory Committee of NYSE Arca Equities into the proposed CFR.[36] The CFR's responsibilities therefore would be expanded to include acting in an advisory capacity to the

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[25] *See id.*

[26] *See id.* at 21619.

[27] With respect to the replacement of references to "Appeals Panel," the Exchange notes that NYSE Arca Rule 10.11(e)(1) currently provides that appellate review of Floor citations and minor rule plan sanctions are referred directly to an appropriate Board Appeals Committee Panel (defined as an "Appeals Panel") appointed by the NYSE Arca Board, and current NYSE Arca Rule 10.11(e)(2) governs decisions by such Appeals Panels. The Exchange proposes to replace "an appropriate Board Appeals Committee Panel ('Appeals Panel') appointed by the Board" in NYSE Arca Rule 10.11(e)(1) with "CFR" because it believes that it would be more appropriate for such matters to be directly referred to the CFR, which can then determine whether to appoint a CFR Appeals Panel as is currently proposed for disciplinary appeals under NYSE Arca Rule 10.8(b). *See id.* at 21617 n.28 and accompanying text. Accordingly, the Exchange also proposes to add text to NYSE Arca Rule 10.11(e)(2) to provide that the CFR may appoint a CFR Appeals Panel to conduct reviews under this subsection or may decide to conduct review proceedings on its own. *See id.*

[28] *See id.* at 21618.

[29] *See id.* at 21618. With respect to the deletion of the reference to "the Corporation," which the Exchange explains refers to NYSE Arca Equities, the Exchange notes that the hearings and review of decisions referred to in the rule would be conducted by the CFR, a subcommittee of the NYSE Arca Board.

[30] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[31] 15 U.S.C. 78f(b)(1).

[32] 15 U.S.C. 78f(b)(3).

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78f(b)(7).

[35] *See* Notice, *supra* note 5, at 21616.

[36] *See id.* at 21618. The Exchange notes that the same categories of permit holders that were represented on the OTP Advisory Committee and the Member Advisory Committee would be represented on the proposed CFR. *See id.*

NYSE Arca Board with respect to disciplinary matters, the listing and delisting of securities, regulatory programs, rulemaking and regulatory rules, including trading rules.[37] The Commission notes that the proposed CFR incorporates the salient features of the current NYSE Arca BAC and NYSE Arca Equities BAC, including by incorporating the requirement that the CFR be comprised of the Public Directors, the OTP Directors and ETP Directors.[38] As such, the Commission finds that the Exchange's proposed revisions to its appellate procedure for disciplinary matters and for determinations to limit or prohibit the continued listing of an issuer's securities on NYSE Arca Equities ensures sufficient independence of the appellate function of the Exchange, and therefore helps to ensure that the Exchange is organized and has the capacity to carry out the purposes of the Act, as required by Section 6(b)(1) of the Act.[39]

The Commission also finds that the composition of the proposed CFR ensures the fair representation of members in the administration of the Exchange's affairs.[40] Proposed NYSE Arca Rule 3.3(a)(2)(A) provides that the CFR would be composed of the OTP Director(s), the ETP Director(s) and the Public Directors of both NYSE Arca and NYSE Arca Equities.[41] Because NYSE Arca and NYSE Arca Equities members would serve on the proposed CFR, which would be charged with acting in an advisory capacity to the NYSE Arca Board with respect to disciplinary matters, the listing and delisting of securities, regulatory programs, rulemaking and regulatory rules, including trading rules, the Commission finds that the proposed rule change is consistent with Section 6(b)(3) of the Act.[42]

The Exchange also proposes to amend NYSE Arca Rule 3.3(a)(2)(B) and NYSE Arca Equities Rule 3.3(a)(1)(A) to permit the CFR to appoint a CFR Appeals Panel, consisting of at least three and no more than five individuals.[43] The CFR would either appoint a CFR Appeals Panel to conduct reviews of disciplinary proceedings or elect to conduct review proceedings on its own.[44] According to the Exchange, a CFR Appeals Panel appointed to hear an equities matter would be composed of at least one Public Director and one member or individual associated with an equities member organization, and an appeals panel appointed to hear an options matter would be composed of at least one Public Director and one member or individual associated with an options member organization.[45] The Commission finds that the Exchange's proposal with respect to the proposed composition and the role of a CFR Appeals Panel is consistent with Sections 6(b)(3) and 6(b)(7) of the Act.[46]

Finally, the Commission finds that it is consistent with Section 6(b)(5) of the Act for the Exchange to make various technical and conforming revisions to its Rules.[47]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEArca–2016–11), as modified by the amendment thereto, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–12672 Filed 5–27–16; 8:45 am]

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[37] *See id.*

[38] *See id.* at 21616.

[39] 15 U.S.C. 78f(b)(1).

[40] 15 U.S.C. 78f(b)(3).

[41] *See* Notice, *supra* note 5, at 21616.

[42] 15 U.S.C. 78f(b)(3).

[43] *See* Notice, *supra* note 5, at 21617.

[44] *See id.*

[45] *See id.*

[46] 15 U.S.C. 78f(b)(3) and 15 U.S.C. 78f(b)(7).

[47] 15 U.S.C. 78f(b)(5).

[48] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77895; File No. SR–NASDAQ–2016–071]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of the Shares of the First Trust CEF Income Opportunity ETF and the First Trust Municipal CEF Income Opportunity ETF of First Trust Exchange-Traded Fund VIII

May 24, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 10, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On May 20, 2016, the Exchange submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 thereto, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to list and trade the shares of the following under Nasdaq Rule 5735 ("Managed Fund Shares"):[3] First Trust CEF Income Opportunity ETF (the "CEF Income Opportunity Fund") and First Trust Municipal CEF Income Opportunity ETF (the "Municipal CEF Income Opportunity Fund"). The CEF Income Opportunity Fund and the Municipal CEF Income Opportunity Fund are each a "Fund" and collectively, the "Funds." Each Fund is a series of First Trust Exchange-Traded Fund VIII (the "Trust"). The shares of each Fund are collectively referred to herein as the "Shares."

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039). There are already multiple actively managed funds listed on the Exchange; *see, e.g.,* Securities Exchange Act Release Nos. 72506 (July 1, 2014), 79 FR 38631 (July 8, 2014) (SR–NASDAQ–2014–050) (order approving listing and trading of First Trust Strategic Income ETF); 69464 (April 26, 2013), 78 FR 25774 (May 2, 2013) (SR–NASDAQ–2013–036) (order approving listing and trading of First Trust Senior Loan Fund); and 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR–NASDAQ–2012–004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of each Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares[4] on the Exchange. Each Fund will be an actively managed exchange-traded fund ("ETF"). The Shares will be offered by the Trust, which was established as a Massachusetts business trust on February 22, 2016.[5] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A ("Registration Statement") with the Commission.[6] Each Fund will be a series of the Trust.

First Trust Advisors L.P. will be the investment adviser ("Adviser") to the Funds. The Funds do not currently intend to use a sub-adviser. First Trust Portfolios L.P. (the "Distributor") will be the principal underwriter and distributor of each Fund's Shares. The Bank of New York Mellon Corporation ("BNY") will act as the administrator, accounting agent, custodian and transfer agent to the Funds.

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio.

Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a broker-dealer, but it is affiliated with the Distributor, a broker-dealer, and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to a portfolio.

In addition, personnel who make decisions on each Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such Fund's portfolio. In the event (a) the Adviser or any sub-adviser registers as a broker-dealer, or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement and will maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to a portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Each Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Funds' Principal Investment Strategies

The investment objective of the CEF Income Opportunity Fund will be to seek to provide current income with a secondary emphasis on total return. The investment objective of the Municipal CEF Income Opportunity Fund will be to seek to provide current income. Under normal market conditions,[8] (a) the CEF Income Opportunity Fund will seek to achieve its investment objective by investing at least 80% of its net assets (including investment borrowings) in a portfolio of closed-end funds and (b) the Municipal CEF Income Opportunity Fund will seek to achieve its investment objective by investing at least 80% of its net assets (including investment borrowings) in a portfolio of municipal closed-end funds.[9] In selecting the Closed-End Funds in which each Fund will invest, the Adviser will utilize a range of investment approaches and will take into account various market metrics and economic factors, as well as market conditions.

Other Investments for the Funds

Each Fund may invest (in the aggregate) up to 20% of its net assets in the following securities and instruments:

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[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (the "1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 28468 (October 27, 2008) (File No. 812–13477).

[6] *See* Registration Statement on Form N–1A for the Trust, dated March 14, 2016 (File Nos. 333–210186 and 811–23147). The descriptions of the Funds and the Shares contained herein are based, in part, on information in the Registration Statement.

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The term "under normal market conditions" as used herein includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. On a temporary basis, including for defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, a Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, a Fund may not be able to achieve its investment objective. A Fund may adopt a defensive strategy when the Adviser believes securities in which such Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

[9] The closed-end funds in which each Fund invests ("Closed-End Funds") will be registered under the 1940 Act and listed and traded in the U.S. on registered exchanges. Each Fund may invest in the securities of Closed-End Funds (as well as certain other investment companies) in excess of the limits imposed under the 1940 Act pursuant to an exemptive order on which the Trust may rely. *See* Investment Company Act Release No. 30377 (February 5, 2013) (File No. 812–13895) (the "Fund of Funds Order").

Each Fund may invest in the following exchange-traded products: (i) ETFs; [10] and (ii) exchange-traded notes ("ETNs").[11]

Each Fund may invest in money market mutual funds that will be investment companies registered under the 1940 Act.

Each Fund may invest in short-term debt instruments (described below) or it may hold cash. The percentage of each Fund invested in such instruments or held in cash will vary and will depend on several factors, including market conditions. Each Fund may invest in the following short-term debt instruments: [12] (1) Fixed rate and floating rate U.S. government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements,[13] which involve purchases of debt securities; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and (6) commercial paper, which is short-term unsecured promissory notes.[14]

Investment Restrictions

The Funds will not invest in derivative instruments.

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), deemed illiquid by the Adviser.[15] Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of such Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[16]

The Funds may not invest 25% or more of the value of their respective total assets in securities of issuers in any one industry. This restriction does not apply to (a) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities or (b) securities of other investment companies.[17]

Creation and Redemption of Shares

Each Fund will issue and redeem Shares on a continuous basis at net asset value ("NAV") [18] only in large blocks of Shares ("Creation Units") in transactions with authorized participants, generally including broker-dealers and large institutional investors ("Authorized Participants"). Creation Units generally will consist of 50,000 Shares, although this may change from time to time. Creation Units, however, are not expected to consist of less than 50,000 Shares. Each Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of instruments and/or cash in lieu of such instruments (the "Creation Basket").[19] In addition, if there is a difference between the NAV attributable to a Creation Unit and the market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments (which may include cash-in-lieu amounts) with the lower value will pay to the other an amount in cash equal to the difference (referred to as the "Cash Component").

Creations and redemptions must be made by or through an Authorized Participant that has executed an agreement that has been agreed to by the Distributor and BNY with respect to creations and redemptions of Creation Units. All standard orders to create Creation Units must be received by the transfer agent no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m., Eastern Time) (the "Closing Time") in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares as next determined on such date after receipt of the order in proper form. Shares may be redeemed only in Creation Units at their NAV next determined after receipt not later than the Closing Time of a redemption request in proper form by a Fund through the transfer agent and only on a business day.

The Funds' custodian, through the National Securities Clearing

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[10] An ETF is an investment company registered under the 1940 Act that holds a portfolio of securities. Many ETFs are designed to track the performance of a securities index, including industry, sector, country and region indexes. ETFs included in a Fund will be listed and traded in the U.S. on registered exchanges. Each Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by other ETFs and their sponsors from the Commission or the Fund of Funds Order. The ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depository Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). While the Funds may invest in inverse ETFs, the Funds will not invest in leveraged or inverse leveraged (*e.g.,* 2X or -3X) ETFs.

[11] While the Funds may invest in inverse ETNs, the Funds will not invest in leveraged or inverse leveraged (*e.g.,* 2X or -3X) ETNs.

[12] Short-term debt instruments will be issued by issuers having a long-term debt rating of at least BBB-/Baa3 by Standard & Poor's Ratings Services, a Division of The McGraw-Hill Companies, Inc. ("S&P Ratings"), Moody's Investors Service, Inc. ("Moody's") or Fitch Ratings ("Fitch") and will have a maturity of one year or less.

[13] Each Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust ("Trust Board"). The Adviser will review and monitor the creditworthiness of such institutions. The Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

[14] Each Fund may only invest in commercial paper rated A–1 or higher by S&P Ratings, Prime-1 or higher by Moody's or F1 or higher by Fitch.

[15] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security or other instrument; the number of dealers wishing to purchase or sell the security or other instrument and the number of other potential purchasers; dealer undertakings to make a market in the security or other instrument; and the nature of the security or other instrument and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security or other instrument, the method of soliciting offers and the mechanics of transfer).

[16] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[17] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[18] The NAV of each Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange ("NYSE"), generally 4:00 p.m., Eastern Time (the "NAV Calculation Time"). NAV per Share will be calculated by dividing a Fund's net assets by the number of Fund Shares outstanding.

[19] It is expected that each Fund will typically issue and redeem Creation Units on a cash basis; however, a Fund may, at times, issue and redeem Creation Units on an in-kind (or partially in-kind) basis.

Corporation, will make available on each business day, prior to the opening of business of the Exchange, the list of the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Component (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day prior to commencement of trading in the Shares.

Net Asset Value

Each Fund's NAV will be determined as of the close of regular trading on the NYSE on each day the NYSE is open for trading. If the NYSE closes early on a valuation day, the NAV will be determined as of that time. NAV per Share will be calculated for each Fund by taking the value of such Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, including accrued expenses and dividends declared but unpaid, and dividing such amount by the total number of Shares outstanding. The result, rounded to the nearest cent, will be the NAV per Share. All valuations will be subject to review by the Trust Board or its delegate.

The Funds' investments will be valued daily. As described more specifically below, investments traded on an exchange (*i.e.*, a regulated market), will generally be valued at market value prices that represent last sale or official closing prices. In addition, as described more specifically below, non-exchange traded investments will generally be valued using prices obtained from third-party pricing services (each, a "Pricing Service").[20]

If, however, valuations for any of the Funds' investments cannot be readily obtained as provided in the preceding manner, or the Pricing Committee of the Adviser (the "Pricing Committee")[21] questions the accuracy or reliability of valuations that are so obtained, such investments will be valued at fair value, as determined by the Pricing Committee, in accordance with valuation procedures (which may be revised from time to time) adopted by the Trust Board (the "Valuation Procedures"), and in accordance with provisions of the 1940 Act. The Pricing Committee's fair value determinations may require subjective judgments about the value of an investment. The fair valuations attempt to estimate the value at which an investment could be sold at the time of pricing, although actual sales could result in price differences, which could be material.

Certain securities in which a Fund may invest will not be listed on any securities exchange or board of trade. Such securities will typically be bought and sold by institutional investors in individually negotiated private transactions that function in many respects like an over-the-counter secondary market, although typically no formal market makers will exist. Certain securities, particularly debt securities, will have few or no trades, or trade infrequently, and information regarding a specific security may not be widely available or may be incomplete. Accordingly, determinations of the value of debt securities may be based on infrequent and dated information. Because there is less reliable, objective data available, elements of judgment may play a greater role in valuation of debt securities than for other types of securities.

The information summarized below is based on the Valuation Procedures as currently in effect; however, as noted above, the Valuation Procedures are amended from time to time and, therefore, such information is subject to change.

The following investments will typically be valued using information provided by a Pricing Service: Except as provided below, short-term U.S. government securities, commercial paper, and bankers' acceptances, all as set forth under "Other Investments for the Funds" (collectively, "Short-Term Debt Instruments"). Debt instruments may be valued at evaluated mean prices, as provided by Pricing Services. Pricing Services typically value non-exchange-traded instruments utilizing a range of market-based inputs and assumptions, including readily available market quotations obtained from broker-dealers making markets in such instruments, cash flows, and transactions for comparable instruments. In pricing certain instruments, the Pricing Services may consider information about an instrument's issuer or market activity provided by the Adviser.

Short-Term Debt Instruments having a remaining maturity of 60 days or less when purchased will typically be valued at cost adjusted for amortization of premiums and accretion of discounts, provided the Pricing Committee has determined that the use of amortized cost is an appropriate reflection of value given market and issuer-specific conditions existing at the time of the determination.

Repurchase agreements will typically be valued as follows:

Overnight repurchase agreements will be valued at amortized cost when it represents the best estimate of value. Term repurchase agreements (*i.e.*, those whose maturity exceeds seven days) will be valued at the average of the bid quotations obtained daily from at least two recognized dealers.

Certificates of deposit and bank time deposits will typically be valued at cost.

Closed-End Funds, ETFs and ETNs that are listed on any exchange other than the Exchange will typically be valued at the last sale price on the exchange on which they are principally traded on the business day as of which such value is being determined. Closed-End Funds, ETFs and ETNs listed on the Exchange will typically be valued at the official closing price on the business day as of which such value is being determined. If there has been no sale on such day, or no official closing price in the case of securities traded on the Exchange, such securities will typically be valued using fair value pricing. Closed-End Funds, ETFs and ETNs traded on more than one securities exchange will be valued at the last sale price or official closing price, as applicable, on the business day as of which such value is being determined at the close of the exchange representing the principal market for such securities.

Money market mutual funds typically will be valued at their NAVs as reported by such funds' Pricing Services.

Availability of Information

The Funds' Web site (*www.ftportfolios.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Funds that may be downloaded. The Web site will include the Shares' ticker, CUSIP and exchange information along with additional quantitative information updated on a daily basis, including, for each Fund: (1) Daily trading volume, the prior business day's reported NAV and closing price, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),[22] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily

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[20] The Adviser may use various Pricing Services or discontinue the use of any Pricing Services, as approved by the Trust Board from time to time.

[21] The Pricing Committee will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding each Fund's portfolio.

[22] The Bid/Ask Price of each Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by each Fund and its service providers.

Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session[23] on the Exchange, each Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the "Disclosed Portfolio" as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[24]

On a daily basis, each Fund will disclose on its Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); quantity held (as measured by, for example, par value or number of shares or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

In addition, for each Fund, an estimated value, defined in Rule 5735(c)(3) as the "Intraday Indicative Value," that reflects an estimated intraday value of the Fund's Disclosed Portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,[25] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. Premiums and discounts between the Intraday Indicative Value and the market price may occur. This should not be viewed as a "real time" update of the NAV per Share of a Fund, which is calculated only once a day.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of a Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Investors will also be able to obtain each Fund's Statement of Additional Information ("SAI"), annual and semi-annual reports (together, "Shareholder Reports"), and Form N–CSR and Form N–SAR, filed twice a year. Each Fund's SAI and Shareholder Reports will be available free upon request from such Fund, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.*

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association ("CTA") plans for the Shares. Quotation and last sale information for the Closed-End Funds, ETFs and ETNs will be available from the exchanges on which they are traded as well as in accordance with any applicable CTA plans.

Pricing information for Short-Term Debt Instruments, repurchase agreements, bank time deposits and certificates of deposit will be available from major broker-dealer firms and/or major market data vendors and/or Pricing Services. Pricing information for Closed-End Funds, ETFs and ETNs will be available from the applicable listing exchange (as indicated above) and from major market data vendors.

Money market mutual funds are typically priced once each business day and their prices will be available through the applicable fund's Web site or from major market data vendors.

Initial and Continued Listing

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and continued listing, each Fund must be in compliance with Rule 10A–3[26] under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12).

Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the other assets constituting the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m., Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[27] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

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[23] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m., Eastern Time; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m., Eastern Time; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m., Eastern Time).

[24] Under accounting procedures to be followed by the Funds, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, a Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[25] Currently, the NASDAQ OMX Global Index Data Service ("GIDS") is the Nasdaq global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade Nasdaq indexes, listed ETFs, or third-party partner indexes and ETFs.

[26] *See* 17 CFR 240.10A–3.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the Closed-End Funds, ETFs and ETNs held by the Funds with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"),[28] and FINRA may obtain trading information regarding trading in the Shares and such securities held by the Funds from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the Closed-End Funds, ETFs and ETNs held by the Funds from markets and other entities that are members of ISG, which includes securities exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

For each Fund, all of such Fund's net assets that are invested in Closed-End Funds, ETFs and ETNs will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular for each Fund will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular for each Fund will reference that such Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular for each Fund will also disclose the trading hours of the Shares of such Fund and the applicable NAV Calculation Time for the Shares. The Information Circular for each Fund will disclose that information about the Shares of such Fund will be publicly available on such Fund's Web site.

Continued Listing Representations

All statements and representations made in this filing regarding (a) the description of the portfolios, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Funds to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5) of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.

The Adviser is not a broker-dealer, but it is affiliated with a broker-dealer, and is required to implement a "fire wall" with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to each Fund's portfolio. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the open-end fund's portfolio.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the Closed-End Funds, ETFs and ETNs held by the Funds with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and such securities held by the Funds from such markets and other entities.

In addition, the Exchange may obtain information regarding trading in the Shares and the Closed-End Funds, ETFs and ETNs held by the Funds from markets and other entities that are members of ISG, which includes securities exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's TRACE. For each Fund, all of such Fund's net assets that are invested in Closed-End Funds, ETFs and ETNs will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

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[27] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[28] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for a Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The investment objective of the CEF Income Opportunity Fund will be to seek to provide current income with a secondary emphasis on total return. The investment objective of the Municipal CEF Income Opportunity Fund will be to seek to provide current income. Under normal market conditions, (a) the CEF Income Opportunity Fund will seek to achieve its investment objective by investing at least 80% of its net assets (including investment borrowings) in a portfolio of Closed-End Funds and (b) the Municipal CEF Income Opportunity Fund will seek to achieve its investment objective by investing at least 80% of its net assets (including investment borrowings) in a portfolio of municipal Closed-End Funds.

The Funds will not invest in derivative instruments. Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), deemed illiquid by the Adviser. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

In addition, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service, will be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, each Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the CTA plans for the Shares. Quotation and last sale information for the Closed-End Funds, ETFs and ETNs will be available from the exchanges on which they are traded as well as in accordance with any applicable CTA plans.

Pricing information for Short-Term Debt Instruments, repurchase agreements, bank time deposits and certificates of deposit will be available from major broker-dealer firms and/or major market data vendors and/or Pricing Services. Pricing information for Closed-End Funds, ETFs and ETNs will be available from the applicable listing exchange (as indicated above) and from major market data vendors. Money market mutual funds are typically priced once each business day and their prices will be available through the applicable fund's Web site or from major market data vendors.

Each Fund's Web site will include a form of the prospectus for such Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Funds will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

Each Fund's investments will be valued daily. Investments traded on an exchange (*i.e.*, a regulated market), will generally be valued at market value prices that represent last sale or official closing prices. Non-exchange traded investments will generally be valued using prices obtained from a Pricing Service. If, however, valuations for any of the Funds' investments cannot be readily obtained as provided in the preceding manner, or the Pricing Committee questions the accuracy or reliability of valuations that are so obtained, such investments will be valued at fair value, as determined by the Pricing Committee, in accordance with the Valuation Procedures and in accordance with provisions of the 1940 Act.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace.

As noted above, FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the Closed-End Funds, ETFs and ETNs held by the Funds with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and such securities held by the Funds from such markets and other entities.

In addition, the Exchange may obtain information regarding trading in the Shares and the Closed-End Funds, ETFs and ETNs held by the Funds from markets and other entities that are members of ISG, which includes securities exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's TRACE.

Furthermore, as noted above, investors will have ready access to information regarding the Funds' holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares. For each Fund, all of such Fund's net assets that are invested in Closed-End Funds, ETFs and ETNs will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of additional types of actively managed exchange-traded funds that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–071 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–071. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–071 and should be submitted on or before June 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–12670 Filed 5–27–16; 8:45 am]

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[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77892; File No. SR–BX–2016–027]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options Pricing at Chapter XV, Section 2

May 24, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 19, 2016, NASDAQ BX, Inc. ("BX" or "Exchange")[3] filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Options Pricing at Chapter XV, Section 2, entitled "BX Options Market—Fees and Rebates," which governs pricing for BX members using the BX Options Market ("BX Options"). The Exchange proposes to modify certain fees (per executed contract) applicable [sic] the Select Symbol Options Tier Schedule for certain Penny Pilot[4] Options (each a "Select Symbol" and together the "Select Symbols").

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Chapter XV, Section 2, to modify the fees[5] schedule to adopt a Fee to Add Liquidity in the Select Symbol Options[6]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that it has legally changed its name to NASDAQ BX, Inc. with the state of Delaware and filed Form 1 reflecting the change, and is in the process of changing its rules to reflect the new name.

[4] The Penny Pilot was established in June 2012 and extended in 2015. *See* Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030) (order approving BX option rules and establishing Penny Pilot); and 75326 (June 29, 2015), 80 FR 38481 (July 6, 2015) (SR–BX–2015–037) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016).

[5] Fees are per executed contract. BX Chapter XV, Section 2(1).

[6] Select Symbols represent some of the highest volume Penny Pilot Options traded on the Exchange and in the U.S. The following are Select

Tier Schedule for certain Penny Pilot Options. The proposed Fee to Add Liquidity would apply to BX Options Market Maker[7] trading with Non-Customer[8] or BX Options Market Maker, or Firm.[9]

Currently, Chapter XV, Section 2, subsection (1), contains a Select Symbols Options Tier Schedule that has four tiers; and one fee for BX Options Market Maker to add liquidity in Select Symbols Options in a footnote (the "footnote").[10] The Exchange proposes to delete the footnote and to add a Fee to Add Liquidity as a fifth column in the Select Symbols Options Tier Schedule. The proposed fees are reduced as the Tiers increase from Tier 1 through Tier 4, as discussed in detail below.

Change 1—Penny Pilot Options: Add Fee To Add Liquidity Column to Select Symbols Options Tier Schedule

In Change 1, the Exchange proposes modifications to convert the current footnoted Fee to Add Liquidity to a fifth column in the Select Symbols Options Tier Schedule that is graduated per Tiers 1 through 4. The proposed change will not amend the criteria to qualify for the existing tiers. The proposed change keeps the $0.04 fee that is in the current footnote and makes it applicable to Tier 3, while proposing new graduated fees for the other three Tiers.

Specifically, the Exchange proposes to add a fifth column, Fee to Add Liquidity, to the Select Symbols Options Tier Schedule when BX Options Market Maker trades with Non-Customer or BX Options Market Maker, or Firm. This column will include graduated fees that range from $0.14 for Tier 1 to $0.00 for Tier 4,[11] as follows.

Tier 1 in the Select Symbols Options Tier Schedule is currently where a BX Participant ("Participant") executes less than 0.05% of total industry customer equity and exchange traded fund ("ETF") option average daily volume ("ADV") contracts per month. Tier 1 ranges from a $0.00 rebate to a $0.44 fee, with a proposed $0.14 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm.[12]

Tier 2 in the Select Symbols Options Tier Schedule is currently where Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month. Tier 2 ranges from a $0.25 rebate to a $0.44 fee, with a proposed $0.10 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm.[13]

Tier 3 in the Select Symbols Options Tier Schedule is currently where Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month. Tier 3 ranges from a $0.37 rebate to a $0.40 fee, with a proposed $0.04 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm.[14] The proposed $0.04 Fee to Add Liquidity is the same as the fee in the current footnote, except as proposed the fee is graduated according to the four Tiers.

Tier 4 in the Select Symbols Options Tier Schedule is currently where Participant executes more than 10,000 BX Price Improvement Auction ("PRISM")[15] Agency Contracts per month; or Participant executes BX Options Market Maker volume of 0.30% or more of total industry customer equity and ETF options ADV per month. If a Participant qualifies for Tier 4 the rates applicable to this tier will supersede any other Select Symbols tier rates that the Participant may qualify for. Tier 4 ranges from a $0.37 rebate to a $0.29 fee, with a proposed $0.00 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm.[16]

Chapter XV, Section 2 subsection (1) reflecting the proposed Select Symbols Options Tier Schedule, with a new Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm, will read as follows:

Sec. 2 BX Options Market—Fees and Rebates

The following charges shall apply to the use of the order execution and routing services of the BX Options market for all securities.

(1) Fees for Execution of Contracts on the BX Options Market:

* * * * *

Symbols: ASHR, DIA, DXJ, EEM, EFA, EWJ, EWT, EWW, EWY, EWZ, FAS, FAZ, FXE, FXI, FXP, GDX, GLD, HYG, IWM, IYR, KRE, OIH, QID, QLD, QQQ, RSX, SDS, SKF, SLV, SPY, SRS, SSO, TBT, TLT, TNA, TZA, UNG, URE, USO, UUP, UVXY, UYG, VXX, XHB, XLB, XLE, XLF, XLI, XLK, XLP, XLU, XLV, XLY, XME, XOP, XRT.

[7] BX Options Market Makers may also be referred to as "Market Makers". The term "BX Options Market Maker" or ("M") means a Participant that has registered as a Market Maker on BX Options pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security. BX Chapter XV.

[8] Note 1 to Chapter XV, Section 2, states: "[1]A Non-Customer includes a Professional, Broker-Dealer and Non-BX Options Market Maker."

[9] The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC. BX Chapter XV.

[10] The current footnote states: • BX Options Market Maker fee to add liquidity in Select Symbols Options will be $0.04 when trading with Firm, Non-Customer, or BX Options Market Maker.

[11] As discussed, Tier 4 requires bringing the highest amount of liquidity to the Exchange.

[12] Currently, there is also a $0.44 Fee to Add Liquidity when BX Options Market Maker is trading with Customer. This fee remains unchanged.

[13] Currently, there is also a $0.44 Fee to Add Liquidity when BX Options Market Maker is trading with Customer. This fee remains unchanged.

[14] Currently, there is also a $0.40 Fee to Add Liquidity when BX Options Market Maker is trading with Customer. This fee remains unchanged.

[15] PRISM is a Price Improvement Mechanism for all-electronic BX Options whereby a buy and sell order may be submitted in one order message to initiate an auction at a stop price and seek potential price improvement. Options are traded electronically on BX Options, and all options participants may respond to a PRISM Auction, the duration of which is set at 200 milliseconds. PRISM includes auto-match functionality in which a Participant (an "Initiating Participant") may electronically submit for execution an order it represents as agent on behalf of customer, broker dealer, or any other entity ("PRISM Order") against principal interest or against any other order it represents as agent (an "Initiating Order") provided it submits the PRISM Order for electronic execution into the PRISM Auction. *See* Chapter VI, Section 9; and Securities Exchange Act Release No. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR–BX–2015–032) (order approving PRISM on BX).

[16] Currently, there is also a $0.29 Fee to Add Liquidity when BX Options Market Maker is trading with Customer. This fee remains unchanged.

SELECT SYMBOLS OPTIONS TIER SCHEDULE

	Rebate to add liquidity	Fee to add liquidity	Rebate to remove liquidity	Fee to remove liquidity	Fee to add liquidity
When:	Customer	BX Options Market Maker	Customer	BX Options Market Maker	BX Options Market Maker
Trading with:	Non-customer or BX Options Market Maker, or Firm	Customer	Non-customer or BX Options Market Maker, Customer, or Firm	Customer	Non-customer or BX Options Market Maker, or Firm
Tier 1: Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month	$0.00	$0.44	$0.00	$0.42	$0.14
Tier 2: Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month	0.10	0.44	0.25	0.42	0.10
Tier 3: Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month	0.20	0.40	0.37	0.39	0.04
Tier 4: Participant executes greater than 10,000 PRISM Agency Contracts per month; or Participant executes BX Options Market Maker volume of 0.30% or more of total industry customer equity and ETF options ADV per month	0.25	0.29	0.37	0.25	0.00

BX Options Select Symbol List

The following are Select Symbols: ASHR, DIA, DXJ, EEM, EFA, EWJ, EWT, EWW, EWY, EWZ, FAS, FAZ, FXE, FXI, FXP, GDX, GLD, HYG, IWM, IYR, KRE, OIH, QID, QLD, QQQ, RSX, SDS, SKF, SLV, SPY, SRS, SSO, TBT, TLT, TNA, TZA, UNG, URE, USO, UUP, UVXY, UYG, VXX, XHB, XLB, XLE, XLF, XLI, XLK, XLP, XLU, XLV, XLY, XME, XOP, XRT

- Firm fee to add liquidity and fee to remove liquidity in Select Symbols Options will be $0.33 per contract, regardless of counterparty.
- Non-Customer fee to add liquidity and fee to remove liquidity in Select Symbols Options will be $0.46 per contract, regardless of counterparty.
- BX Options Market Maker fee to remove liquidity in Select Symbols Options will be $0.46 per contract when trading with Firm, Non-Customer, or BX Options Market Maker.
- Customer fee to add liquidity in Select Symbols Options when contra to another Customer is $0.33 per contract.
- Volume from all products listed on BX Options will apply to the Select Symbols Options Tiers.

* * * * *

The Exchange is proposing fees changes and adopting in the Select Symbols Options Tier Schedule a graduated Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. The Exchange believes that this will provide incentives for execution of more contracts, and in particular Select Symbols Options contracts, on the BX Options Market. The proposed Fee to Add Liquidity incentivizes execution of Select Symbol Options Contracts on the Exchange by the fee being lower for each subsequent higher-level Tier.

The Exchange also believes that its proposal should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act,[18] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies." [19]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [20] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[21] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost." [22]

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[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4), (5).

[19] Securities Exchange Act Release No. 51808 (June 29, 2005), 70 FR 37496 at 37499 (File No. S7–10–04) ("Regulation NMS Adopting Release") [sic].

[20] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[21] *See id.* at 534–535.

[22] *See id.* at 537.

Further, "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ."[23] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange proposes to amend its Chapter XV, Section 2, to modify certain fees to adopt Fee to Add Liquidity in the Select Symbol Options Tier Schedule for certain Penny Pilot Options. The proposed Fee to Add Liquidity in the Select Symbols Options Tier Schedule would, as discussed, apply where BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. The Exchange believes that its proposal is reasonable, equitable, and not unfairly discriminatory and should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

Change 1—Penny Pilot Options: Add Fee To Add Liquidity Column To Select Symbols Options Tier Schedule

In Change 1, the Exchange proposes modifications to convert the current footnoted Fee to Add Liquidity[24] to a fifth column in the Select Symbols Options Tier Schedule. The proposed Fee to Add Liquidity is graduated according to Tiers 1 through 4 in the Select Symbols Options Tier Schedule. The proposed change keeps the current $0.04 fee applicable to Tier 3, and indicates that the fee is reduced as additional liquidity is brought to the Exchange according to Tiers 1 through 4 in the Select Symbols Options Tier Schedule.

Specifically, the Exchange proposes four graduated fees that range from $0.14 for Tier 1 to $0.00 for Tier 4.

Tier 1[25] currently ranges from a $0.00 rebate to a $0.44 fee. The Exchange is proposing in Tier 1 the largest $0.14 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. Tier 2 currently ranges from a $0.25 rebate to a $0.44 fee. The Exchange is proposing in Tier 2 a $0.10 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. Tier 3 ranges from a $0.37 rebate to a $0.40 fee. The Exchange is proposing in Tier 3 a $0.04 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. The proposed $0.04 Fee to Add Liquidity is the same as the fee in the current footnote, except as proposed the fee is graduated according to the four Tiers. Tier 4 currently ranges from a $0.37 rebate to a $0.29 fee. In Tier 4, the Exchange is proposing the smallest $0.00 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm.

The proposed rule change is reasonable because it continues to encourage market participant behavior through the fees and rebates system, which is an accepted methodology among options exchanges.[26] Converting the current footnote regarding Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm to the graduated Fee to Add Liquidity is reasonable because of the nature of Select Symbol options. These are the most heavily traded options on the Exchange as well as in the industry. By graduating the proposed Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm, the Exchange is promoting transactions in Select Symbol Options and further promoting options liquidity on the Exchange.

The Exchange believes that the proposed Fee to Add Liquidity in the Select Symbol Options Tier Schedule is reasonable because it is not a novel, untested structure. Rather, the proposed Fee to Add Liquidity is a graduated fees and rebate structure that is similar to what is offered by other options markets[27] and is similar to the Exchange's existing Select Symbols Options Tier Schedule.[28] The proposed fee schedule is, as discussed, graduated according to four Tiers. Thus, the highest proposed Fee to Add Liquidity is applicable to Tier 1, which requires the least amount or [sic] liquidity, and the lowest proposed Fee to Add Liquidity is applicable to Tier 4, which requires the greatest amount of liquidity. The Exchange believes that the higher fees in Tier 1 and 2 (as opposed to the footnote fee of $0.04, which is proposed in Tier 3) are reasonable because they continue to incentivize bringing liquidity to the Exchange while enabling the Exchange to recoup some of its costs.

The proposed Fee to Add Liquidity that varies according to Tiers in the Select Symbols Options Tier Schedule clearly reflects the progressively increasing nature of Participant executions structured for the purpose of attracting order flow to the Exchange. This encourages market participant behavior through progressive tiered fees and rebates using an accepted methodology among options exchanges.

The Exchange is proposing changes to its fees schedule and adopting in the Select Symbols Options Tier Schedule a graduated Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. The Exchange believes that this will provide incentives for execution of more contracts, and in particular Select Symbols Options contracts, on the BX Options Market. The proposed Fee to Add Liquidity incentivizes execution of Select Symbol Options Contracts on the Exchange by such fee being lower for each subsequent higher Tier.

The Exchange also believes that its proposal should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

Establishing the proposed Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm is equitable and not unfairly discriminatory. This is because the Exchange's proposal to add the noted Fee to Add Liquidity in the Select Symbols Options Tier Schedule will apply uniformly to all similarly situated

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[23] *See id.* at 539 (quoting Securities Exchange Act Commission at [sic] Release No. 59039 (December 2, 2008), 73 FR 74770 at 74782–74783 (December 9, 2008) (SR–NYSEArca–2006–21)).

[24] The current footnote states: • BX Options Market Maker fee to add liquidity in Select Symbols Options will be $0.04 when trading with Firm, Non-Customer, or BX Options Market Maker.

[25] Each of the four applicable Tiers, which do not change, are described above.

[26] *See, e.g.,* fee and rebate schedules of other options exchanges, including, but not limited to, NASDAQ Options Market ("NOM"), NASDAQ PHLX LLC ("Phlx"), and Chicago Board Options Exchange ("CBOE").

[27] *See, e.g.,* MIAX Options Exchange ("MIAX").

[28] *See, e.g.,* in the Exchange's current Select Symbols Options Tier Schedule: The Fee to Add Liquidity when BX Options Market Maker is trading with Customer, and the Rebate to Add Liquidity when Customer is trading with Non-Customer or BX Options Market Maker, or Firm. BX Chapter XV, Section 2(1).

Participants. The fee and rebate schedule as proposed continues to reflect differentiation among different market participants. The Exchange believes that the differentiation is equitable and not unfairly discriminatory, as well as reasonable, because transactions of a BX Options Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and BX Options Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. All Market Makers are designated as specialists on BX Options for all purposes under the Exchange Act or Rules thereunder.[29]

The Exchange believes that by making the proposed changes it is continuing to incentivize Participants to execute more volume on the Exchange to further enhance liquidity in this market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that its proposal to make changes to its Select Symbols Options Tiers Schedule to adopt the Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-competitive because the Exchange is simply continuing its fees and rebates for Penny Pilot Options in the Select Symbols Options Tier Schedule, and is establishing a graduated Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm in [sic] in order to remain competitive in the current environment.

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In terms of intra-market competition, the Exchange notes that price differentiation among different market participants operating on the Exchange (*e.g.,* Customer and BX Options Market Maker) is reasonable. Customer activity, for example, enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Moreover, unlike others [sic] market participants each BX Options Market Maker commits to various obligations. These obligations include, for example, transactions of a BX Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and BX Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings.[30]

In this instance, the proposed changes to the fees to establish a Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm in the Select Symbols Options Tiers Schedule, does not impose a burden on competition because the Exchange's execution and routing services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result.

Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Additionally, the changes proposed herein are pro-competitive to the extent that they continue to allow the Exchange to promote and maintain order executions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[31] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (***http://www.sec.gov/rules/sro.shtml***); or

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[29] *See* Chapter VII, Section 5, entitled "Obligations of Market Makers." *See also* Chapter VII, Section 2.

[30] *See* Chapter VII, Section 5.

[31] 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2016–027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2016–027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2016–027 and should be submitted on or before June 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–12669 Filed 5–27–16; 8:45 am]

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[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77890; File No. SR–NASDAQ–2016–072])

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of the Shares of the Amplify Dow Theory Forecasts Buy List ETF of Amplify ETF Trust

May 24, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 10, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in in Items I and II below, which Items have been prepared by Nasdaq. On May 20, 2016, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice, as modified by Amendment No. 1 thereto, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to list and trade the shares of the Amplify Dow Theory Forecasts Buy List ETF (the "Fund") of Amplify ETF Trust (the "Trust") under Nasdaq Rule 5735 ("Managed Fund Shares").[3] The shares of the Fund are collectively referred to herein as the "Shares."

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/*, at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares[4] on the Exchange. The Fund will be an actively-managed exchange-traded fund ("ETF"). The Shares will be offered by the Trust, which was established as a Massachusetts business trust on January 6, 2015.[5] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A ("Registration Statement") with the Commission.[6] The Fund will be a series of the Trust.

Amplify Investments LLC will be the investment adviser ("Adviser") to the Fund. The following will serve as investment sub-advisers (each, a "Sub-Adviser") to the Fund: Horizon Investment Services, LLC ("Horizon") and Penserra Capital Management LLC ("Penserra"). Quasar Distributors LLC

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039). There are already multiple actively-managed funds listed on the Exchange; *see, e.g.,* Securities Exchange Act Release Nos. 72506 (July 1, 2014), 79 FR 38631 (July 8, 2014) (SR–NASDAQ–2014–050) (order approving listing and trading of First Trust Strategic Income ETF); 69464 (April 26, 2013), 78 FR 25774 (May 2, 2013) (SR–NASDAQ–2013–036) (order approving listing and trading of First Trust Senior Loan Fund); 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR–NASDAQ–2012–004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (the "1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 31582 (April 28, 2015) (File No. 812–14423) (the "Exemptive Relief").

[6] *See* Post-Effective Amendment No. 2 to Registration Statement on Form N 1A for the Trust, dated May 5, 2016 (File Nos. 333 207937 and 811 23108). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

(the "Distributor") will be the principal underwriter and distributor of the Fund's Shares. U.S. Bancorp Fund Services LLC will act as the administrator, accounting agent, custodian and transfer agent to the Fund.

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio.

Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Adviser nor any Sub-Adviser is a broker-dealer, although Penserra is affiliated with a broker-dealer.[8] Penserra has implemented and will maintain a fire wall with respect to their respective broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.

In addition, personnel who make decisions on the Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio. In the event (a) the Adviser or a Sub-Adviser registers as a broker-dealer, or becomes affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement and will maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Fund intends to qualify each year as a regulated investment company ("RIC") under Subchapter M of the Internal Revenue Code of 1986, as amended.

Amplify Dow Theory Forecasts Buy List ETF

Principal Investments

The investment objective of the Fund will be to seek long-term capital appreciation. Under normal market conditions,[9] the Fund will seek to achieve its investment objective by investing at least 90% of its net assets (including investment borrowings) in companies included in the buy list (updated on a semi-weekly basis) (the "Buy List") of the *Dow Theory Forecasts,* an investment newsletter of Horizon Publishing Company, LLC, an affiliate of Horizon.

In general, the Buy List includes 25 to 40 U.S. exchange-traded stocks. All of such stocks are large-cap or mid-cap and are selected based on a proprietary quantitative ranking system known as Quadrix®. Quadrix® ranks approximately 5,000 stocks and scores target stocks based on their operating momentum; valuation; long-term term track record and financial strength; earnings-estimate trends; and share-price performance.

The Fund will seek diversification among the ten economic sectors of the U.S. stock market, and it is not anticipated that more than 45% of the portfolio will be invested in a single sector. Horizon will select the Fund's portfolio securities from the Buy List. Penserra will be responsible for implementing the Fund's investment program by, among other things, trading portfolio securities and performing related services, rebalancing the Fund's portfolio, and providing cash management services in accordance with the investment advice formulated by, and model portfolios delivered by, the Adviser and Horizon.

Other Investments

The Fund may invest the remaining 10% of its net assets in short-term debt securities and other short-term debt instruments (described below), as well as cash equivalents, or it may hold cash. The percentage of the Fund invested in such holdings or held in cash will vary and will depend on several factors, including market conditions. The Fund may invest in the following short-term debt instruments:[10] (1) Fixed rate and floating rate U.S. government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements,[11] which involve purchases of debt securities; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and (6) commercial paper, which is short-term unsecured promissory notes.[12]

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[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser, each Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The Adviser and Horizon are not currently affiliated with a broker-dealer.

[9] The term "under normal market conditions" as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. On a temporary basis, including for defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser or a Sub-Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

[10] Short-term debt instruments are issued by issuers having a long-term debt rating of at least A by Standard & Poor's Ratings Services, a Division of The McGraw-Hill Companies, Inc. ("S&P Ratings"), Moody's Investors Service, Inc. ("Moody's") or Fitch Ratings ("Fitch") and have a maturity of one year or less.

[11] The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust ("Trust Board"). The Adviser will review and monitor the creditworthiness of such institutions. The Adviser

The Fund may invest in the securities of other ETFs and non-exchange listed open-end investment companies (referred to as "mutual funds"), including money market funds,[13] that, in each case, will be investment companies registered under the 1940 Act.

Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities deemed illiquid by the Adviser or a Sub-Adviser.[14] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[15]

The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry or group of industries (other than securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, or securities of other investment companies), except that the Fund may invest 25% or more of the value of its total assets in securities of issuers in a group of industries to approximately the same extent that the Buy List includes the securities of a particular group of industries.[16]

All of the Fund's net assets that are invested in exchange-traded equity securities (including common stocks and ETFs) will be invested in securities that are listed on a U.S. exchange.[17]

The Fund will not invest in derivative instruments. The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

Creation and Redemption of Shares

The Fund will issue and redeem Shares on a continuous basis at net asset value ("NAV") only in large blocks of Shares ("Creation Units") in transactions with authorized participants, generally including broker-dealers and large institutional investors ("Authorized Participants"). Creation Units generally will consist of 50,000 Shares, although this may change from time to time. Creation Units, however, are not expected to consist of less than 50,000 Shares.

As described in the Registration Statement and consistent with the Exemptive Relief, the Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of instruments and/or cash in lieu of such instruments (the "Creation Basket"). In addition, if there is a difference between the NAV attributable to a Creation Unit and the market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will pay to the other an amount in cash equal to the difference (referred to as the "Balancing Amount").

Creations and redemptions must be made by or through an Authorized Participant that has executed an agreement with the Distributor with respect to creations and redemptions of Creation Units. All standard orders to create Creation Units must be received by the Distributor no later than the close of the regular trading session on the New York Stock Exchange ("NYSE") (ordinarily 4:00 p.m., Eastern Time) (the "Closing Time"), in each case on the date such order is placed, in order for the creation of Creation Units to be effected based on the NAV of Shares as next determined on such date after receipt of the order in proper form. Shares may be redeemed only in Creation Units at their NAV next determined after receipt not later than the Closing Time of a redemption request in proper form by the Fund and only on a business day.

Each business day, before the open of trading on the Exchange, the Fund will cause to be published through the National Securities Clearing Corporation the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Balancing Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day.

Net Asset Value

The Fund's NAV will be determined as of the close of regular trading on the NYSE on each day the NYSE is open for trading. If the NYSE closes early on a valuation day, the NAV will be determined as of that time. NAV per Share will be calculated for the Fund by taking the value of the Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, including accrued expenses and dividends declared but unpaid, and dividing such amount by the total number of Shares outstanding. The

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will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

[12] The Fund may only invest in commercial paper rated A–1 or higher by S&P Ratings, Prime-1 or higher by Moody's or F1 or higher by Fitch.

[13] It is expected that any such mutual fund or ETF will invest primarily in short-term fixed income securities. An ETF is an investment company registered under the 1940 Act that holds a portfolio of securities. Many ETFs are designed to track the performance of a securities index, including industry, sector, country and region indexes. ETFs included in the Fund will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by other ETFs and their sponsors from the Commission. In addition, the Fund may invest in the securities of certain other investment companies in excess of the limits imposed under the 1940 Act pursuant to an exemptive order that the Trust has obtained from the Commission. *See* Investment Company Act Release No. 30377 (February 5, 2013) (File No. 812–13895). The ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depository Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (*e.g.,* 2X or -3X) ETFs.

[14] In reaching liquidity decisions, the Adviser and a Sub-Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

[15] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[16] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975). As indicated above, it is not anticipated that more than 45% of the portfolio will be invested in a single sector.

[17] The Fund will not invest in OTC secondary market securities.

result, rounded to the nearest cent, will be the NAV per Share. All valuations will be subject to review by the Trust Board or its delegate.

The Fund's investments will be valued daily. As described more specifically below, investments traded on an exchange (*i.e.,* a regulated market), will generally be valued at market value prices that represent last sale or official closing prices. In addition, as described more specifically below, non-exchange traded investments will generally be valued using prices obtained from third-party pricing services (each, a "Pricing Service").[18] If, however, valuations for any of the Fund's investments cannot be readily obtained as provided in the preceding manner, or the Pricing Committee of the Adviser (the "Pricing Committee")[19] questions the accuracy or reliability of valuations that are so obtained, such investments will be valued at fair value, as determined by the Pricing Committee, in accordance with valuation procedures (which may be revised from time to time) adopted by the Trust Board (the "Valuation Procedures"), and in accordance with provisions of the 1940 Act. The Pricing Committee's fair value determinations may require subjective judgments about the value of an investment. The fair valuations attempt to estimate the value at which an investment could be sold at the time of pricing, although actual sales could result in price differences, which could be material.

Certain securities in which the Fund may invest will not be listed on any securities exchange or board of trade. Such securities will typically be bought and sold by institutional investors in individually negotiated private transactions that function in many respects like an over-the-counter ("OTC") secondary market, although typically no formal market makers will exist. Certain securities, particularly debt securities, will have few or no trades, or trade infrequently, and information regarding a specific security may not be widely available or may be incomplete. Accordingly, determinations of the value of debt securities may be based on infrequent and dated information. Because there is less reliable, objective data available, elements of judgment may play a greater role in valuation of debt securities than for other types of securities.

The information summarized below is based on the Valuation Procedures as currently in effect; however, as noted above, the Valuation Procedures are amended from time to time and, therefore, such information is subject to change.

Equity securities (including other ETFs) listed on a securities exchange, market or automated quotation system for which quotations are readily available (except for securities traded on NASDAQ) will be valued at the last reported sale price on the primary exchange or market on which they are traded on the valuation date (or at approximately 4:00 p.m., E.T. if a security's primary exchange is normally open at that time). For a security that trades on multiple exchanges, the primary exchange will generally be considered to be the exchange on which the security generally has the highest volume of trading activity. If it is not possible to determine the last reported sale price on the relevant exchange or market on the valuation date, the value of the security will be taken to be the most recent mean between the bid and asked prices on such exchange or market on the valuation date. Absent both bid and asked prices on such exchange, the bid price may be used. For securities traded on NASDAQ, the official closing price will be used. If such prices are not available, the security will be valued based on values supplied by independent brokers or by fair value pricing, as described below.

Open-end investment companies other than ETFs will be valued at NAV.

Except as provided below, short-term U.S. government securities, commercial paper, and bankers' acceptances, all as set forth under "Other Investments" (collectively, "Short-Term Debt Instruments") will typically be valued using information provided by a Pricing Service. Pricing Services typically value non-exchange-traded instruments utilizing a range of market-based inputs and assumptions, including readily available market quotations obtained from broker-dealers making markets in such instruments, cash flows, and transactions for comparable instruments. In pricing certain instruments, the Pricing Services may consider information about an instrument's issuer or market activity provided by the Adviser.

Short-Term Debt Instruments having a remaining maturity of 60 days or less when purchased will typically be valued at cost adjusted for amortization of premiums and accretion of discounts, provided the Pricing Committee has determined that the use of amortized cost is an appropriate reflection of value given market and issuer-specific conditions existing at the time of the determination.

Certificates of deposit and bank time deposits will typically be valued at cost.

Repurchase agreements will typically be valued as follows: Overnight repurchase agreements will be valued at amortized cost when it represents the best estimate of value. Term repurchase agreements (*i.e.,* those whose maturity exceeds seven days) will be valued at the average of the bid quotations obtained daily from at least two recognized dealers.

Availability of Information

The Fund's Web site, *www.amplifyetfs.com,* which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include the Shares' ticker, CUSIP and exchange information along with additional quantitative information updated on a daily basis, including, for the Fund: (1) Daily trading volume, the prior business day's reported NAV and closing price, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),[20] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session[21] on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the "Disclosed Portfolio" as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[22]

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[18] The Adviser may use various Pricing Services or discontinue the use of any Pricing Services, as approved by the Trust Board from time to time.

[19] The Pricing Committee will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio.

[20] The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[21] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m., Eastern Time; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m., Eastern Time; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m., Eastern Time).

[22] Under accounting procedures to be followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

On a daily basis, the Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security or other asset or instrument underlying the holding, if any; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the "Intraday Indicative Value," that reflects an estimated intraday value of the Fund's Disclosed Portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,[23] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. The Intraday Indicative Value will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. Premiums and discounts between the Intraday Indicative Value and the market price may occur. This should not be viewed as a "real time" update of the NAV per Share of the Fund, which is calculated only once a day.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Investors will also be able to obtain the Fund's Statement of Additional Information ("SAI"), the Fund's annual and semi-annual reports (together, "Shareholder Reports"), and its Form N–CSR and Form N–SAR, filed twice a year. The Fund's SAI and Shareholder Reports will be available free upon request from the Fund, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.*

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association ("CTA") plans for the Shares. Quotation and last sale information for U.S. exchange-traded equity securities (including common stocks and ETFs) will be available from the exchanges on which they are traded as well as in accordance with any applicable CTA plans.

Open-end investment companies (other than ETFs) are typically priced once each business day and their prices will be available through the applicable fund's Web site or from major market data vendors.

Pricing information for Short-Term Debt Instruments, repurchase agreements, certificates of deposit and bank time deposits will be available from major broker-dealer firms and/or major market data vendors and/or Pricing Services.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions and taxes will be included in the Registration Statement.

Initial and Continued Listing

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and continued listing, the Fund must be in compliance with Rule 10A–3 [24] under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the other assets constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m., Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[25] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

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[23] Currently, the NASDAQ OMX Global Index Data Service ("GIDS") is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

[24] *See* 17 CFR 240.10A–3.

[25] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund (including common stocks and ETFs) with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"),[26] and FINRA may obtain trading information regarding trading in the Shares and such exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes securities exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

All of the Fund's net assets that are invested in exchange-traded equity securities (including common stocks and ETFs) will be invested in securities that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's Web site.

Continued Listing Representations

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.

Neither the Adviser nor any Sub-Adviser is a broker-dealer, although Penserra is affiliated with a broker-dealer and is required to implement a "fire wall" with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio. The Adviser and Horizon are not currently affiliated with a broker-dealer. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the open-end fund's portfolio.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund (including common stocks and ETFs) with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and such exchange-traded securities held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes securities exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

All of the Fund's net assets that are invested in exchange-traded equity securities (including common stocks and ETFs) will be invested in securities that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

The investment objective of the Fund will be to seek long-term capital appreciation. Under normal market conditions, the Fund will seek to achieve its investment objective by investing at least 90% of its net assets (including investment borrowings) in companies included in the Buy List of the *Dow Theory Forecasts,* an investment newsletter of an affiliate of the Horizon. The Fund will not invest in derivative instruments. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities deemed illiquid by the Adviser or a Sub-Adviser.

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[26] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service, will be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the CTA plans for the Shares. Pricing information for exchange-traded common stocks and ETFs will be available from the applicable listing exchange and from major market data vendors.

Pricing information for Short-Term Debt Instruments, repurchase agreements, certificates of deposit and bank time deposits will be available from major broker-dealer firms and/or major market data vendors and/or Pricing Services. Open-end investment companies (other than ETFs) are typically priced once each business day and their prices will be available through the applicable fund's Web site or from major market data vendors.

The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

In calculating its NAV, the Fund generally will value its investment portfolio at market price. If market prices are not readily available or the Fund reasonably believes they are unreliable, such as in the case of a security value that has been materially affected by events occurring after the relevant market closes, the Fund will price those securities at fair value as determined using methods approved by the Trust Board.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

As noted above, FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-traded securities and instruments held by the Fund (including common stocks and ETFs) with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and such exchange-traded securities held by the Fund from such markets and other entities.

In addition, the Exchange may obtain information regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes securities exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. Furthermore, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded fund that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (a) By order approve or disapprove such proposed rule change; or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2016–072 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASDAQ–2016–072. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–072 and should be submitted on or before June 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–12667 Filed 5–27–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

RIN 3245–AG64

Small Business Innovation Research Program and Small Business Technology Transfer Program Policy Directive

AGENCY: Small Business Administration.

ACTION: Notice; extension of comment period.

SUMMARY: On April 7, 2016, the U.S. Small Business Administration (SBA) published a notice in the **Federal Register** to solicit public comments on a proposed SBIR/STTR Policy Directive, which among other things seeks to clarify the data rights and Phase III preference afforded to SBIR and STTR small business awardees, add definitions relating to data rights, and clarify the benchmarks for progress towards commercialization. This notice announces the extension of the current comment period for an additional 30 days until July 6, 2016.

DATES: The comment period for the proposed SBIR/STTR Policy Directive is hereby extended from June 6, 2016 until July 6, 2016. You must submit your comments on or before July 6, 2016.

ADDRESSES: You may submit comments, identified by RIN: 3245–AG64, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail, Hand Delivery/Courier:* Edsel Brown, Assistant Director, Office of Innovation, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

SBA will post all comments to this proposed rule on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to Edsel Brown, or send an email to *technology@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Edsel Brown, Assistant Director, Office of Innovation, at (202) 401–6365 or *technnology@sba.gov.*

SUPPLEMENTARY INFORMATION: On April 7, 2016, SBA published a notice and request for comments on the referenced proposed SBIR/STTR Policy Directive at 81 FR 20483. SBA received a formal request to extend the comment period by 60 days. After considering the request, SBA decided to extend the comment period an additional 30 days, until July 6. 2016. SBA believes this additional time, coupled with the initial 60-day comment period, will give commenters ample time to consider the proposed changes and submit comments.

John R. Williams,

Director of Innovation, Office of Investment and Innovation.

[FR Doc. 2016–12566 Filed 5–27–16; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2016–0021]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and one extension of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)
Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*
(SSA)
Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–

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[27] 17 CFR 200.30–3(a)(12).

2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2016–0020].

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than August 1, 2016. Individuals can obtain copies of the collection instrument by writing to the above email address.

Application Status—20 CFR 401.45—0960–0763. Application Status provides users with the capability to check the status of their pending Social Security claims via the National 800 Number Automated Telephone Service. Users need their Social Security number and a confirmation number to access this information. SSA's systems determine the type of claim(s) the caller filed based upon the information they provide. Subsequently, the automated telephone system provides callers with the option to choose the claim for which they wish to obtain status. If the caller applied for multiple claims, the automated system allows the caller to select only one claim at a time. Once callers select the claim(s) they are calling about, an automated voice advises them of the status of their claim. The respondents are current Social Security claimants who wish to check on the status of their claims.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Automated Telephone Services	160,034	1	3	8,002

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than June 30, 2016. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Beneficiary Recontact Report—20 CFR 404.703, 404.705—0960–0502. SSA investigates recipients of disability payments to determine their continuing eligibility for payments. Research indicates recipients may fail to report circumstances that affect their eligibility. Two such cases are: (1) when parents receiving disability benefits for their child marry; and (2) the removal of an entitled child from parents' care. SSA uses Form SSA–1588–SM to ask mothers or fathers about both their marital status and children under their care, to detect overpayments and avoid continuing payment to those who are no longer entitled. Respondents are recipients of mothers' or fathers' Social Security benefits.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1588–SM	94,293	1	5	7,858

2. Technical Updates to Applicability of the Supplemental Security Income (SSI) Reduced Benefit Rate for Individuals Residing in Medical Treatment Facilities—20 CFR 416.708(k)—0960–0758. Section 1611(e)(1)(A) of the Social Security Act states residents of public institutions are ineligible for SSI. However, Sections 1611(e)(1)(B) and (G) list certain exceptions to this provision, making it necessary for SSA to collect information about SSI recipients who enter or leave a medical treatment facility or other public or private institution. SSA's regulation 20 CFR 416.708(k) establishes the reporting guidelines for implementing this legislative requirement. SSA collects the information to determine eligibility for SSI and the payment amount. The respondents are SSI recipients who enter or leave an institution.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Technical Updates Statement	34,200	1	7	3,990

Dated: May 25, 2016.

Naomi R. Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2016–12690 Filed 5–27–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 9587]

30-Day Notice of Proposed Information Collection: Office of Language Services Contractor Application Form

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to June 30, 2016.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to David Record at 2401 E Street NW., Fourteenth Floor, Washington, DC 20522, who may be reached on 202–261–8800 or at *RecordDM1@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Office of Language Services Contractor Application Form.
- *OMB Control Number:* 1405–0191.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Administration (A/OPR/LS).
- *Form Number:* DS–7651.
- *Respondents:* General Public Applying for Translator and/or Interpreter Contract Positions.
- *Estimated Number of Respondents:* 700.
- *Estimated Number of Responses:* 700.
- *Average Time Per Response:* 30 minutes.
- *Total Estimated Burden Time:* 350 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The information collected is needed to ascertain whether respondents are valid interpreting and/or translating candidates, based on their work history and legal work status in the United States. If candidates successfully become contractors for the U.S. Department of State, Office of Language Services, the information collected is used to initiate security clearance background checks and for processing payment vouchers. Respondents are typically members of the general public with varying degrees of experience in the fields of interpreting and/or translating.

Methodology

OLS makes the "Office of Language Services Contractor Application Form" available via the OLS Internet site. Respondents can submit it via email.

Dated: May 24, 2016.

Thomas F. Hufford,

Director, Office of Language Services, Department of State.

[FR Doc. 2016–12719 Filed 5–27–16; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held Monday, July 11, 2016, from 1 p.m. to 4:30 p.m., and Tuesday, July 12, 2016, from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the FAA Air Traffic Control System Command Center, 3701 Macintosh Dr., Warrenton, VA 20187.

FOR FURTHER INFORMATION CONTACT: Ms. Heather Hemdal, ATPAC Executive Director, 600 Independence Avenue SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App.2), notice is hereby given of a meeting of the ATPAC to be held Monday, July 11, 2016, from 1 p.m. to 4:30 p.m., and Tuesday, July 12, 2016, from 9 a.m. to 4:30 p.m.

The agenda for this meeting will cover a continuation of the ATPAC's review of present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures. It will also include:

1. Call for Safety Items.
2. Approval of minutes of the previous meeting.
3. Introduction of New Areas of Concern or Miscellaneous items.
4. Items of Interest.
5. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify Ms. Heather Hemdal no later than July 1, 2016. Any member of the public may present a written statement to the ATPAC at any time at the address given above.

Issued in Washington, DC, on May 23, 2016.

Heather Hemdal,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 2016–12634 Filed 5–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2016–0005]

Notice of Funding Opportunity for the Advanced Transportation and Congestion Management Technologies Deployment Program

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of Funding Opportunity; extension of application submittal date.

SUMMARY: The FHWA is extending the period for submitting applications to the Notice of Funding Opportunity (NOFO) published March 29, 2016, for the advanced transportation and congestion management technologies deployment program. The original due date for applications was June 3, 2016. The

extension is based on requests from potential eligible entities for additional time to prepare and submit applications.

DATES: The period for submitting applications to the Notice of Funding Opportunity for the Advanced Transportation and Congestion Management Technologies Deployment (ATCMTD) program published on March 29, 2016 (81 FR 17536), is extended. Applications must be submitted by 3 p.m. ET, on June 24, 2016. Applications must be submitted through *http://www.grants.gov.*

ADDRESSES: Applications must be submitted through *www.grants.gov.* Only applicants who comply with all submission requirements described in this notice and submit applications through *www.grants.gov* will be eligible for award.

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, please contact the FHWA via email at *ATCMTD@dot.gov.* For questions about the ATCMTD program, contact Mr. Robert Arnold, Director, FHWA Office of Transportation Management, telephone 202–366–1285 or via email at *Robert.Arnold@dot.gov;* or Mr. Egan Smith, Managing Director, Intelligent Transportation Systems (ITS) Joint Program Office, telephone 202–366–9224 or via email at *Egan.Smith@dot.gov.* For legal questions, please contact Mr. Adam Sleeter, Attorney-Advisor, FHWA Office of the Chief Counsel, telephone 202–366–8839 or via email at *Adam.Sleeter@dot.gov.* Business hours for FHWA are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays. A telecommunications device for the deaf (TDD) is available at 202–366–3993. Additionally, the NOFO, answers to questions, requests for clarification, and information about Webinars for further guidance will be posted at *http://www.grants.gov/.*

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register** Web site at: *http://www.federalregister.gov.*

SUPPLEMENTARY INFORMATION: On March 29, 2016, at 81 FR 17536, FHWA published in the **Federal Register** a NOFO soliciting applications for the ATCMTD program for fiscal year 2016 from eligible entities to develop model deployment sites for large scale installation and operation of advanced transportation technologies to improve safety, efficiency, system performance, and infrastructure return on investment. More information about the ATCMTD program, including this notice, amendments to the NOFO, and frequently asked questions, is available at *http://www.grants.gov/* under funding opportunity number DTFH6116RA00012.

The original date for submitting applications was June 3, 2016. A number of eligible entities requested additional time to develop and prepare applications for the ATCMTD program. The FHWA recognizes that potential applicants may need additional time to fully prepare applications, therefore, the date for submitting applications for the ATCMTD program is changed from June 3, 2016, to June 24, 2016.

Authority: 23 U.S.C. 503(c)(4).

Issued on: May 23, 2016.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

[FR Doc. 2016–12785 Filed 5–27–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Environmental Impact Statement for the Link Union Station Project, Los Angeles, CA

AGENCY: Federal Railroad Administration (FRA), U. S. Department of Transportation (DOT).

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS).

SUMMARY: Through this NOI, FRA announces it will prepare an EIS and Environmental Impact Report (EIR) jointly with the Los Angeles County Metropolitan Transportation Authority (Metro) for the Link Union Station Project (Link US Project). FRA and Metro will develop the EIS/EIR in compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.,* and the California Environmental Quality Act (CEQA). FRA invites the public and Federal, state, and local agencies to provide input into the scope of the EIS and will consider all information developed during outreach activities when preparing the EIS/EIR.

DATES: Persons interested in providing written comments on the scope of the Link US Project must do so by June 30, 2016.

A Public scoping meeting is scheduled on Thursday, June 2, 2016.

ADDRESSES: Interested persons should send written comments to FRA's Office of Program Delivery, 1200 New Jersey Avenue SE., (Mail Stop 20), Washington, DC 20590, or Los Angeles County Metropolitan Transportation Authority (Metro) Headquarters, One Gateway Plaza (Mail Stop 99–13–1), Los Angeles, California, 90012, or via email to Mark Dierking, Community Relations Manager, at *dierkingm@metro.net.* Comments should include "Link Union Station—NOI Scoping Comments" in the subject line.

Interested persons may also provide comments orally or in writing at the scoping meeting. FRA and Metro will hold the scoping meeting between 6:00 p.m. and 8:00 p.m. at: Metro Headquarters: One Gateway Plaza, Los Angeles, California, 90012. Metro Headquarters is an Americans with Disabilities Act of 1990 (ADA) accessible facility. Spanish and Mandarin translation will be provided. You may call 213–922–2499 at least 72 hours in advance of the meeting to request other ADA accommodations or translation services.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Perez, Environmental Protection Specialist, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE., (Mail Stop 20), Washington, DC 20590; Telephone: (202) 493–0388, email: *stephanie.perez@dot.gov,* or to Mark Dierking, Community Relations Manager, One Gateway Plaza (Mail Stop 99–13–1), Los Angeles, CA 90012; email: *dierkingm@metro.net.* Scoping materials and information concerning the scoping meeting is available through Metro's Web site: *metro.net/projects/regionalrail/scrip.*

SUPPLEMENTARY INFORMATION: FRA is an operating administration of DOT and is responsible for overseeing the safety of railroad operations, including the safety of any proposed rail ground transportation system. FRA is also authorized to provide, subject to appropriations, funding for intercity passenger and rail capital investments and to provide loans and other financial support for railroad investment. FRA may provide funding or financing for the Link US Project in the future.

FRA is the lead agency under NEPA. Metro will be the joint lead agency under NEPA and the lead state agency under CEQA. FRA and Metro will prepare the EIS/EIR consistent with NEPA, the Council on Environmental Quality (CEQ) regulations implementing NEPA in 40 CFR parts 1500–1508, and FRA's Procedures for Considering Environmental Impacts in 64 FR 28545, dated May 26, 1999 (Environmental Procedures). FRA and Metro will prepare the EIS consistent with 23 U.S.C. 139 (titled "Efficient environmental reviews for project decisionmaking"). FRA and Metro will also prepare the EIS/EIR consistent with CEQA.

The EIS will also document FRA's compliance with other applicable Federal, state, and local laws including, Section 106 of the National Historic Preservation Act (54 U.S.C. 306108), Section 4(f) of the U.S. Department of Transportation Act of 1966 (49 U.S.C. 303(c)), Section 309(a) of the Clean Air Act (42 U.S.C. 7609(a)), and Executive Order 12898 and U.S. DOT Order 5610.2(a) on Environmental Justice.

Project Background

The Link US Project would improve operational flexibility and expand capacity at Los Angeles Union Station (LAUS). FRA and Caltrans first studied potential capacity improvements in a 2002 EIS/EIR known as the Run-Through Tracks Project. In 2005, FRA issued a Final EIS and Caltrans certified the Final EIR for the Run-Through Tracks Project. Since 2005, Metro identified new components and changes to the local and regional operational and capacity requirements at LAUS. The following new components and changed circumstances now need to be studied in the Link US Project EIS/EIR:

- Coordinated activities between Metro and the California High-Speed Rail Authority (CHSRA) to facilitate the planned High Speed Rail (HSR) system;
- A new passenger concourse as a component of the LAUS Master Plan (LAUSMP). The passenger concourse will include new vertical circulation elements (stairs, escalators, and elevators) and up to 600,000 square feet dedicated for passenger circulation and waiting areas, passenger support functions and amenities (up to 100,000 square feet), and building functional support areas to meet the demands of a multi-modal transit station;
- Integration of run-through tracks on an elevated rail yard to accommodate the new passenger concourse, consistent with the LAUSMP;
- Incorporation of a single loop track;
- Compatibility with other planned or completed Metro and public projects;
- Property ownership and valuation changes; and
- Land use changes since 2005 within the study area.

FRA and Metro will prepare the Link US Project EIS/EIR to analyze these new components and address the changed circumstances.

Project Location

LAUS is located at 800 North Alameda Street, City of Los Angeles, California 90012. LAUS is generally bounded by U.S. Highway 101 (U.S. 101) to the south, Alameda Street to the west, Cesar E. Chavez Avenue to the north, and Vignes Street to the east and is located in an urban setting, northeast of downtown Los Angeles and west of the Los Angeles River. The Link US Project limits within the railroad corridor extend from Control Point (CP) Chavez in the north (near North Main Street) to CP Olympic in the south (near the Interstate 10/State Route 60/U.S. 101 interchange).

Project Need

LAUS is a stub-ended terminal station dating from 1939 that is the central hub for regional transportation in Southern California. Metro operates multiple modes of transit including bus, subway (Red and Purple Lines), and light rail transit (Gold Line) at LAUS. Metrolink (the commuter rail operator governed by the Southern California Regional Rail Authority (SCRRA)) and Amtrak are responsible for operating commuter and intercity rail services, respectively, and maintaining a safe and reliable level of service on existing rail lines, including the Los Angeles-San Diego-San Luis Obispo railroad corridor (primarily commuter ridership). CHSRA is responsible for construction and operation of a statewide HSR system in California. FRA and CHSRA are preparing NEPA/CEQA documents for the Burbank to Los Angeles and Los Angeles to Anaheim sections of the HSR System both of which include a common station at LAUS, including consideration of an at-grade concept. However, LAUS's operational functionality is becoming increasingly limited due to a forecasted increase in ridership on multiple transit and rail lines and the potential for new passenger rail and HSR service in the future.

Between 2000 and 2014, the population in the Southern California Association of Governments (SCAG) region increased by 2 million people (approximately 12.3 percent increase). By 2040, employment and population growth within the SCAG region is forecasted to increase by 16 percent. According to a 2015Metro Transforming LAUS Summary Report about LAUS, there are approximately 110,000 passenger trips travelling through LAUS each weekday. Metro anticipates continued increases in population and employment will nearly double the demand on existing and planned modes of transportation; resulting in over 200,000 passenger trips through LAUS each weekday by 2040.

By 2030, Metrolink and Amtrak anticipate they will need to nearly double the number of overall train operations to provide additional commuter and intercity passenger service throughout the region. This includes an increase in "through" trains between Los Angeles and San Diego making all stops; an increase in commuter and intercity passenger service to Ventura and Santa Barbara counties; intercity passenger service to San Luis Obispo; and the addition of a "through" intercity passenger service to San Francisco (California State Rail Plan, Caltrans 2013). In addition, Metro is working with the CHSRA to facilitate the planned HSR system at LAUS.

FRA and Metro have identified Link US Project as a critical transportation project to respond to the forecasted ridership increases in the region. Link US Project also represents a critical first step in the implementation of regional transportation solutions identified in the following SCAG planning documents:

- Federally Approved Transportation Improvement Program, (2015);
- Regional Comprehensive Plan and Guide (2008); and
- Regional Transportation Plan and Sustainable Communities Strategy (2016).

Project Purpose and Objectives

Due to the forecasted increase in ridership on existing transit and rail modes combined with the potential for new passenger rail and HSR service in the future, the overall purpose of the Link US Project is to improve the functionality and operational capacity of LAUS in a cost-effective manner while maintaining existing transit/rail operations during construction. Metro is also working with the CHSRA to facilitate the planned HSR system at LAUS within the limits of the Link US Project. The purpose of the Link US Project is to improve mobility, travel times, and safety in the following ways:

- Improve operational efficiencies and scheduling reliability for trains using LAUS by reducing the train movement constraints that results from "stub-end" operation by constructing new "run-through" tracks and an operational loop;
- Improve pedestrian access to, and functionality of, the passenger platforms while also improving connectivity with other transit serving amenities (retail, food service, and waiting areas) by expanding the passenger concourse;

- Increase the operational capacity of LAUS by over 40 percent to accommodate planned growth of Metrolink and Amtrak train services, and potential HSR service, while not precluding other planned improvements at LAUS by developing an expanded passenger concourse located below the elevated platforms;
- Preserve space and connections for future rail and transit options, including potential HSR service;
- Enhance accessibility to all transit and rail services for passengers with disabilities;
- Minimize service disruptions to existing transit service during construction; and
- Minimize adverse effects to the environment, including historic properties listed on the National Register of Historic Places.

The Link US Project would also reduce greenhouse gas emissions by over 40 percent and thereby meet the air pollution and greenhouse gas emission reduction targets mandated by California Assembly Bill 32, known as the Global Warming Solutions Act of 2006, as amended, and California Senate Bill 375, known as the California's Sustainable Communities and Climate Protection Act of 2008. These two laws establish the basis for SCAG and Metro to accommodate regional growth through increased and more frequent access to alternative modes of transit for local communities.

Proposed Project Alternatives

The Link US Project would transform LAUS from a "stub-end tracks station" into a "run-through tracks station" while increasing operational capacity to meet the demands of the broader rail system. The EIS/EIR will consider the No Action/No Build Alternative and a number of Build Alternatives.

Each of the Build Alternatives would result in enhanced operational capacity from CP Chavez in the north (near North Main Street) to CP Olympic in the south (near the Interstate 10/State Route 60/U.S. 101 interchange). Major project components are described below.

- *Throat and Elevated Rail Yard*—The Link US Project would include new track and subgrade improvements to increase the elevation of the tracks leading to LAUS known as the "throat" and an elevated rail yard including new longer, elevated passenger platforms and canopies.
- *New Passenger Concourse*—The Link US Project would include a new passenger concourse, up to 600,000 square feet (passenger circulation and waiting areas, passenger support functions and amenities, and building functional support areas), including 100,000 square feet of transit serving amenities to meet the demands of a multi-modal transit station. The new passenger concourse would enhance ADA accessibility at LAUS and include new vertical circulation elements (stairs, escalators, and elevators) for passengers between the elevated platforms and the new passenger concourse under the rail yard.
- *Run-Through Tracks*—The Link US Project would include up to 10 run-through tracks with a new viaduct or viaducts over U.S. 101 that extend run-through tracks for regional/intercity rail (Metrolink/Amtrak) and potentially HSR south along the west bank of the Los Angeles River, and a separate overhead viaduct for a single loop track turning north to the existing Keller Yard.

The Link US Project would also require modifications to existing bridges at city streets to accommodate new elevated tracks; modifications to U.S. 101 and local streets to accommodate the run-through tracks overhead viaducts; railroad signal, Positive Train Control, and communications-related improvements; modifications to the SCRRA West Bank main line tracks; modifications to the existing Keller Yard and BNSF Railway West Bank Yard; modifications to the Amtrak lead track; new access roadways to the railroad right-of-way (ROW); additional ROW; and utility relocations, replacements, and abandonments.

Probable Effects

The EIS/EIR will consider the potential environmental effects of the Link US Project alternatives in detail. FRA and Metro will analyze the following environmental issue areas in the EIS/EIR: Air Quality and Global Climate Change; Biological and Wetland Resources; Cultural and Historic Resources; Economic and Fiscal Impacts; Energy; Environmental Justice; Floodplains, Hydrology, and Water Quality; Geology, Soils, and Seismicity; Hazardous Waste and Materials; Land Use, Planning, and Communities; Noise and Vibration; Parklands, Community Services, and Other Public Facilities; Safety and Security; Section 4(f) Resources; Transportation; and Visual Quality and Aesthetics.

Scoping and Comments

FRA encourages broad participation in the EIS process during scoping and review of the resulting environmental documents. FRA invites all interested agencies, Native American Tribes, and the public at large to participate in the scoping process to ensure the EIS/EIR addresses the full range of issues related to the proposed action, reasonable alternatives are addressed, and all significant issues are identified. FRA requests that any public agency having jurisdiction over an aspect of the Link US Project identify the agency's permit or environmental review requirements and the scope and content of the environmental information germane to the agency's jurisdiction over the Link US Project. FRA requests that public agencies advise FRA if they anticipate taking a major action in connection with the proposed project and if they wish to cooperate in the preparation of the Link US Project EIS/EIR.

FRA will coordinate with participating agencies during development of the Draft EIS under 23 U.S.C. 139. FRA will invite all Federal and non-Federal agencies and Native American Tribes that may have an interest in the Link US Project to become participating agencies for the EIS. If an agency or Tribe is not invited and would like to participate, please contact FRA at the contact information listed above. FRA will develop a Coordination Plan summarizing how it will engage the public, agencies, and Tribes in the process. The Coordination Plan will be posted to the Link US Project Web site *metro.net/projects/regionalrail/scrip* and to FRA's Web site *fra.dot.gov*.

FRA and Metro have scheduled a public scoping meeting as an important component of the scoping process for both the state and Federal environmental review. The scoping meeting described in the **ADDRESSES** section will also be advertised locally and included in additional public notification. The format of the meeting will consist of a short presentation describing the proposed Link US Project, objectives, and existing conditions.

Issued in Washington, DC on May 26, 2016.

Jamie Rennert,

Director, Office of Program Delivery.

[FR Doc. 2016–12813 Filed 5–26–16; 11:15 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 2015 and 2016 Passenger Ferry Grant Program Project Selections

AGENCY: Federal Transit Administration.

ACTION: Correction: Passenger Ferry Grant Program Announcement of Project Selections.

SUMMARY: The Federal Transit Administration (FTA) is publishing the list of Fiscal Years 2015–2016 Passenger Ferry Project Selections which was inadvertently omitted from the allocation notice published on May 23, 2016, titled "Fiscal Year 2015 and 2016 Passenger Ferry Grant Program Project Selections" (81 FR 32383).

FOR FURTHER INFORMATION CONTACT: Project sponsors should contact the appropriate FTA Regional Office for information regarding applying for the funds made available through this notice. A list of Regional Offices can be found at *www.fta.dot.gov.*

Carolyn Flowers,
Acting Administrator.

TABLE 1—FY 2015 AND FY 2016 PASSENGER FERRY PROJECT SELECTIONS

State	Recipient	Project ID	Project description	Allocation
CA ..	Golden Gate Bridge, Highway & Transportation District.	D2015–PFGP–001.	The Golden Gate Bridge, Highway and Transportation District will receive funding to modify embarking and disembarking entrances (ramps and gangways) for two vessels at the District's Ferry Terminals. This project will improve operations and safety by providing smoother and quicker off-loading and loading of the vessels, which provide more than 2.5 million passenger trips per year between San Francisco and Marin County.	$2,200,000
CA ..	Los Angeles County Metropolitan Transportation Authority.	D2015–PFGP–002.	The Los Angeles County Metropolitan Transportation Authority will receive funding to replace the existing 5,000-square-feet ferry terminal (built in 1968) with a two-story 10,000-square-feet terminal at the City of Avalon Santa Catalina Island. Annually, more than 1.2 million people utilize the Ferry Terminal. This project will help residents access employment opportunities, educational and healthcare centers, as well as social and human services.	4,000,000
CA ..	San Francisco Bay Area Water Emergency Transportation Authority.	D2015–PFGP–003.	The San Francisco Bay Area Water Emergency Transportation Authority (WETA) will receive funding to expand berthing capacity at the Ferry Terminal from four to six berths. WETA currently utilizes 12 vessels operating on four primary routes and provided 2.1 million passenger trips in FY 2014/15. This project will help prevent vessel collisions, as well as provide additional capacity for emergency response/evacuation plans and support existing and future planned water transit services.	4,000,000
FL ...	Jacksonville Transportation Authority.	D2015–PFGP–004.	The Jacksonville Transportation Authority will receive funding to replace the St. Johns River Ferry slips. The new docking equipment will be used for the St. Johns River Ferry, which connects the north and south ends of Florida State Road A1A and serves more than 475,000 riders each year. This project will help to provide ladders of opportunity to the Mayport residents.	6,000,000
GA ..	Chatham Area Transit Authority	D2015–PFGP–005.	The Chatham Area Transit Authority will receive funding to rehabilitate three vessels and purchases a spare drive system. This project will ensure that the system can deliver high quality transportation services for approximately 750,000 workers, residents, and visitors who travel between downtown Savannah and Hutchinson Island where the Savannah International Trade and Convention Center is located.	713,280
LA ...	New Orleans Regional Transit Authority.	D2015–PFGP–006.	The New Orleans Regional Transit Authority will receive funding to replace a 90-year old ferry terminal located between Louisiana's Central Business District and the historic French Quarter on the east bank of the Mississippi River. The New Orleans Ferry Service serves 858,000 passengers annually, providing a much needed link between residential, educational and commerical areas of New Orleans. This project will increase the efficiency and effectiveness of the transportation system and the movement of workers, bolstering local tourism and supporting ongoing Riverfront development efforts.	5,000,000
MA ..	Massachusetts Bay Transportation Authority.	D2015–PFGP–007.	The Massachusetts Bay Transportation Authority will receive funding to replace the existing sectional steel barge Hingham Commuter Float System. The floats will serve two ferry routes between Hingham and Boston. This project will improve the overall safety of the Hingham dock for more than one million passengers and vessel operators that utilize the two ferry routes throughout Boston.	1,000,000
MA ..	Massachusetts Department of Transportation.	D2015–PFGP–008.	The Massachusetts Department of Transportation will receive funding for the Lynn Commuter Ferry Vessel Acquisition. This project will construct a new 149-passenger vessel to provide year-round commuter ferry service from the Blossom Street Ferry Terminal in Lynn to Central Wharf in Downtown Boston. This project will provide intermodal connections in downtown Boston to jobs, educational opportunities, and health and human services following a successful two-year pilot project for ferry service which saw ridership increase from 13,136 to 14,577 riders.	4,500,000

TABLE 1—FY 2015 AND FY 2016 PASSENGER FERRY PROJECT SELECTIONS—Continued

State	Recipient	Project ID	Project description	Allocation
MD ..	Baltimore City Department of Transportation.	D2015–PFGP–009.	The Baltimore City Department of Transportation will receive funding to improve the Baltimore Charm City Circulator's Harbor Connector. This project will rebrand the Harbor Connector as an extension of Charm City Circulator. The Baltimore Harbor Connector has experienced rapid ridership growth since first starting service with one route in 2010. With three routes in operation, the Harbor Connector averaged 1,013 daily boardings during the first eight months of 2015—a 33.5% increase over the same period in 2014.	1,356,992
ME ..	City of Portland	D2015–PFGP–010.	The City of Portland will receive funding to improve the second phase of the Casco Bay Parking Garage built in 1988 to serve passengers of the Casco Bay Island Transit District. This project will improve the safety of passengers and vehicle flow. Annually, the Casco Bay Parking Garage serves over 50,000 users. Located near the Casco Bay Ferry Terminal, the garage is a critical link to interconnected transportation throughout the Portland, Maine area and beyond, providing island and mainland residents access to employment, health care, business and other services.	296,571
NJ ...	Delaware River and Bay Authority.	D2015–PFGP–011 ($933,157); D2016–PFGP–001 ($5,066,843).	The Delaware River and Bay Authority will receive funding to replace four ferry engines. This project will improve the state of good repair of the system, increase reliability of service, improve operational capability by permitting higher cruising speeds, and improve maintenance capabilities. The Cape May—Lewes Ferry service, which is owned and operated by the Delaware River and Bay Authority, is a critical part of the Mid-Atlantic regional transportation infrastructure, carrying approximately 725,000 passengers and 260,000 vehicles annually on a 17-mile route between Cape May, NJ and Lewes, DE.	6,000,000
NJ ...	New Jersey Transit	D2016–PFGP–002.	New Jersey Transit will receive funding to retrofit the power and propulsion engine systems for seven Catamaran commuter ferry vessels. This project will improve economic benefits, safety and capacity to the approximately 30,000 daily riders who utilize 21 ferry routes throughout New Jersey and New York.	6,000,000
NY ..	New York City Department of Transportation.	D2016–PFGP–003.	The New York City Department of Transportation will receive funding to replace the deck scows (barges) for the Staten Island Ferry Dockbuilding Unit, upgrade the Staten Island Ferry Maintenance Facility Ramps and Racks, and replace the City Island Ferry Loading Access Bridge. These projects will provide access for residents to jobs, education, health care, and other community needs. The Staten Island Ferry is the world's largest passenger-only ferry system and the busiest ferry route in the United States with an annual ridership of nearly 22 million. It operates 24 hours per day, every day of the year, on a route between the St. George Intermodal Ferry Terminal in northern Staten Island and the Whitehall Intermodal Ferry in Lower Manhattan.	6,000,000
WA	King County Department of Transportation.	D2016–PFGP–004.	The King County Department of Transportation will receive funding to replace the passenger only ferry docking float and expand the docking capacity to relaunch or start routes from Ballard, Bremerton, Kingston and Southworth to downtown Seattle. This project will improve safety, operations, and service. Currently, King County operates two routes that serve downtown Seattle from West Seattle and Vashon Island. In 2014, combined ridership on these two routes was 467,119, a 5% increase over 2013.	3,948,000
WA	Kitsap County Public Transportation Benefit Area Authority.	D2016–PFGP–005.	The Kitsap County Public Transportation Benefit Area Authority will receive funding to purchase the existing concrete pier and replace the float and ramp located at Port Orchard. This project will provide improved safety and mobility options for approximately four million ferry passengers per year who travel between Annapolis and Bremerton, WA.	4,515,000
WA	Washington State Department of Transportation.	D2016–PFGP–006.	The Washington State Department of Transportation will receive funding to replace and expand the pedestrian bridge that connects the main terminal building to the passenger-only terminal. Located in downtown Seattle, this project will improve safety and operations by separating pedestrian and vehicle traffic. The project will increase efficiency and capacity, featuring separated and safer loading for pedestrians and priority loading for bicycles and high-occupancy vehicles. The project will also remove a pier that is at the end of its useful life.	3,444,480

TABLE 1—FY 2015 AND FY 2016 PASSENGER FERRY PROJECT SELECTIONS—Continued

State	Recipient	Project ID	Project description	Allocation
....	....	....	Total Allocation	58,974,323

[FR Doc. 2016–12688 Filed 5–27–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0060, Notice No. 2016–7]

International Standards on the Transport of Dangerous Goods

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This notice is to advise interested persons that on Tuesday, June 14, 2016, the Department of Transportation (DOT) and the Pipeline and Hazardous Materials Safety Administration (PHMSA) will conduct a public meeting in preparation for the 49th session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UN SCOE TDG). The UN SCOE TDG meeting will be held July 27 to July 6, 2016, in Geneva, Switzerland. PHMSA is soliciting comments about potential new work items, which may be considered for inclusion in its international agenda and feedback on issues that PHMSA may put forward for consideration by the Sub-Committee. (See the **SUPPLEMENTARY INFORMATION** section below for a list of potential UN SCOE TDG meeting topics.)

Also on Tuesday, June 14, 2016, the Occupational Safety and Health Administration (OSHA) will conduct a public meeting (Docket No. OSHA–2016–0005) to discuss proposals in preparation for the 31st session of the United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS), to be held July 5 to 8, 2016, in Geneva, Switzerland.

Time and Location: Both the PHMSA and the OSHA public meetings will take place on Tuesday, June 14, 2016, at the DOT Headquarters, which is located at 1200 New Jersey Avenue SE, Washington, DC 20590–0001. PHMSA will host its public meeting between 9:00 am to 12:00 p.m. EST in Conference Room 4 in DOT Headquarters, West Building.

Then, OSHA will host its public meeting between 1:00 p.m. to 4:00 p.m. EST in Conference Room 4 in DOT Headquarters, West Building.

Advanced Meeting Registration: The DOT requests that attendees pre-register for these meetings by completing the form at *https://www.surveymonkey.com/r/Q3Z53PT.* Attendees may use the same form to pre-register for both the PHMSA and the OSHA meetings. Failure to pre-register may delay your access into the DOT Headquarters building. Additionally, if you are attending in-person, arrive early to allow time for security checks necessary to access the building.

Conference call-in and "live meeting" capability will be provided for both meetings. Specific information on call-in and live meeting access will be posted when available at *http://www.phmsa.dot.gov/hazmat/regs/international* under "Upcoming Events" and at *http://www.osha.gov/dsg/hazcom/.*

FOR FURTHER INFORMATION CONTACT: Steven Webb or Aaron Wiener, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590. Phone number: (202) 366–8553.

SUPPLEMENTARY INFORMATION ON THE PHMSA MEETING: Following the 49th session of the UN SCOE TDG, a copy of the Sub-Committee's report will be available at the United Nations Transport Division's Web site at *http://www.unece.org/trans/main/dgdb/dgsubc3/c3rep.html.* PHMSA's Web site at *http://www.phmsa.dot.gov/hazmat/regs/international* provides additional information regarding the UN SCOE TDG and related matters.

The primary purpose of PHMSA's meeting will be to prepare for the 49th session of the UN SCOE TDG. The 49th session of the UN SCOE TDG is the third of four meetings scheduled for the 2015–2016 biennium. The UN SCOE TDG may also use the information it gathers at the 49th session to use in the 20th Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods Model Regulations, which may be implemented into relevant domestic, regional, and international regulations from January 1, 2019.

Copies of working documents, informal documents, and the meeting agenda may be obtained from the United Nations Transport Division's Web site at *http://www.unece.org/trans/main/dgdb/dgsubc3/c3age.html.*

General topics on the agenda for the UNSCOE TDG meeting include:

- Explosives and related matters;
- Listing, classification, and packing;
- Electric storage systems;
- Transport of gases;
- Global harmonization of transport of dangerous goods regulations with the Model Regulations;
- Guiding principles for the Model Regulations;
- Cooperation with the International Atomic Energy Agency (IAEA);
- New proposals for amendments to the Model Regulations;
- Issues relating to the Globally Harmonized System of Classification and Labeling of Chemicals (GHS); and
- Miscellaneous pending issues.

SUPPLEMENTARY INFORMATION ON THE OSHA MEETING: The **Federal Register** notice and additional detailed information relating to OSHA's public meeting will be available upon publication at *http://www.regulations.gov* (Docket No. OSHA–2016–0005) and on the OSHA Web site at *http://www.osha.gov/dsg/hazcom/.*

Signed at Washington, DC, on May 24, 2016.

William Schoonover,

Acting Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2016–12677 Filed 5–27–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of

Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5 - Passenger-carrying aircraft.

DATES: Comments must be received on or before June 30, 2016.

ADDRESSES: *Address Comments To:* Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(6); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 9, 2016.

Donald Burger,

Chief, Office of the Special Permits and Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
		Special Permits Data		
20239–N	....	PAKLOOK AIR, INC	173.27(b)(2)	To authorize the transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within and around the State of Alaska when other means of transportation are impracticable or not available.
20240–N	....	LG CHEM MICHIGAN INC.	173.185(b)(5), 172.101(j)	To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg net weight in non-DOT specification packaging via cargo aircraft.
20241–N	....	SEACOAST HELICOPTERS, LLC.	173.27(b)(2), 173.1, 172.101(j), 172.200, 172.204(c)(3), 172.301(c), 175.30(a)(1), 175.75.	To authorize the transportation in commerce of certain hazardous materials by 14 CFR part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.
20245–N	....	JAGUAR INSTRUMENTS INC.	173.302(a), 173.304(a)	To authorize the manufacture, mark, sale, and use of non-DOT specification cylinders containing certain hazardous materials.

[FR Doc. 2016–11965 Filed 5–27–16; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; OCC Supplier Registration Form

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general-public and other Federal agencies to take this opportunity to comment on the renewal of an information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the renewal of its information collection titled, "OCC Supplier Registration Form."

DATES: Comments must be submitted on or before August 1, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0316, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed collection of information set forth in this document.

The OCC is proposing to extend OMB approval of the following information collection:

Title: OCC Supplier Registration Form.

OMB Number: 1557–0316.

Frequency of Response: On occasion.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 33 hours.

Abstract: Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) requires the OCC to develop and implement standards and procedures to ensure, to the maximum extent possible, the fair inclusion and utilization of minorities, women, and minority-owned and women-owned businesses in all business and activities of the agency at all levels, including procurement, insurance, and all types of contracts[1] and to develop standards for coordinating technical assistance to such businesses.[2]

In order to comply with the Congressional mandate to develop standards for the fair inclusion and utilization of minority-and women-owned businesses and to provide effective technical assistance to these businesses, the OCC developed an ongoing system to collect up-to-date contact information and capabilities statements from potential suppliers. This information allows the OCC to update and enhance its internal database of interested minority- and women-owned businesses. This information also allows the OCC to measure the effectiveness of its technical assistance and outreach efforts and to target areas where additional outreach efforts are necessary.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. The OCC invites comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information shall have practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology, and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 25, 2016.

Mary Hoyle Gottlieb,

Regulatory Specialist, Legislative and Regulatory Activities Division.

[FR Doc. 2016–12786 Filed 5–27–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection Tools

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–46 and Revenue Procedure 97–44, LIFO Conformity Requirement.

DATES: Written comments should be received on or before August 1, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to LaNita Van Dyke, Internal Revenue Service, room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: LIFO Conformity Requirement.

OMB Number: 1545–1559.

Form Number: Revenue Procedure 98–46 and Revenue Procedure 97–44.

Abstract: Revenue Procedure 97–44 permits automobile dealers that comply with the terms of the revenue procedure to continue using the LIFO inventory method despite previous violations of the LIFO conformity requirements of Internal Revenue Code section 472(c) or (e)(2). Revenue Procedure 98–46 modified Revenue Procedure 97–44 by allowing medium-and heavy-duty truck dealers to take advantage of the favorable relief provided in Revenue Procedure 97–44.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 20 hrs.

Estimated Total Annual Burden Hours: 100,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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[1] 12 U.S.C. 5452(c)(1).

[2] 12 U.S.C. 5452(b)(2)(B).

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 17, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–12660 Filed 5–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection tools

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning EE–111–80 (TD 8019—Final).

DATES: Written comments should be received on or before August 1, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to LaNita Van Dyke, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202)622–3634, or through the Internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Public Inspection of Exempt Organization Return.

OMB Number: 1545–0742.

Form Number: EE–111–80 (TD 8019—Final).

Abstract: Section 6104(b) authorizes the Service to make available to the public the returns required to be filed by exempt organizations. The information requested in Treasury Reg. section 301.6104(b)–1 (b)(4) is necessary in order for the Service not to disclose confidential business information furnished by businesses which contribute to exempt black lung trusts.

Current Actions: There are no changes being made at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Number of Respondents: 22.

Estimated Time per Respondent: 1 hr.

Estimated Total Annual Reporting Burden hours: 22.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 17, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–12659 Filed 5–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 25, 2016.

SUMMARY: The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before June 30, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8117, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Departmental Offices

OMB Control Number: 1505–0168.

Type of Review: Revision of a currently approved collection.

Title: Travel Service Provider and Carrier Service Provider.

Abstract: The information is required of persons subject to the jurisdiction of the United States who have been authorized by OFAC to provide travel and carrier services in connection with travel-related transactions involving Cuba pursuant to the general licenses in section 515.572 of the Cuban Assets Control Regulations, 31 CFR part 515 (CACR). Persons providing services authorized pursuant to 31 CFR 515.572 are required to retain for at least five years from the date of the transaction certain documentation from customers indicating the source of their authorization to travel to Cuba, which must be furnished to OFAC on demand.

As a result of policy changes announced by the President on December 17, 2014, which were implemented in the regulatory changes published by OFAC on January 16, 2015 (80 FR 2291), June 15, 2015 (80 FR 34053), September 21, 2015 (80 FR 56915), January 27, 2016 (81 FR 4583), and March 16, 2016 (81 FR 13989) concerning the Cuban Assets Control Regulations (31 CFR 515), program changes have occurred. These changes, which encourage travel to Cuba coupled with arrangements announced by the Departments of State and Transportation allowing scheduled air service between the United States and Cuba, will significantly increase the ability of U.S. citizens to travel to Cuba to directly engage with the Cuban people, thus resulting in an estimated increase in the number of responses annually.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 29,167.

OMB Control Number: 1505–0190.

Type of Review: Extension of a currently approved collection.

Title: Terrorism Risk Insurance Program Rebuttal of Controlling Influence.

Abstract: The Terrorism Risk Insurance Act of 2002, as amended (TRIA), established the Terrorism Risk Insurance Program (TRIP), which the Secretary of the Treasury administers, with the assistance of the Federal Insurance Office. Title 31 CFR 50.8 specifies a rebuttal procedure that requires a written submission by an insurer that seeks to rebut a regulatory presumption of "controlling influence" over another insurer under the TRIP to provide Treasury with necessary information to make a determination.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 400.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2016–12729 Filed 5–27–16; 8:45 am]

BILLING CODE 4810–25–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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Part II

Department of Energy

10 CFR Parts 429 and 431
Energy Conservation Program: Energy Conservation Standards for Commercial Water Heating Equipment; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[Docket Number EERE–2014–BT–STD–0042]

RIN 1904–AD34

Energy Conservation Program: Energy Conservation Standards for Commercial Water Heating Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including commercial water heaters, hot water supply boilers, and unfired hot water storage tanks (hereinafter referred to as "commercial water heating (CWH) equipment"). EPCA also requires that every 6 years, the U.S. Department of Energy (DOE) must determine whether more-stringent, amended standards would be technologically feasible and economically justified, and would save a significant amount of energy. In this action, DOE has tentatively concluded that there is clear and convincing evidence to support more-stringent standards for several classes of the equipment that are the subject of this rulemaking. DOE did not consider more-stringent standards in this action for commercial oil-fired storage water heaters, whose standards were recently amended. Therefore, DOE proposes amended energy conservation standards for certain commercial water heating equipment, and also announces a public meeting to receive comment on these proposed standards and associated analyses and results.

DATES: *Meeting:* DOE will hold a public meeting on June 6, 2016, from 1:00 p.m. to 5:00 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section VII, "Public Participation," for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than August 1, 2016. See section VII, "Public Participation," for details.

Comments regarding the likely competitive impact of the proposed standards should be sent to the Department of Justice contact listed in the **ADDRESSES** section before June 30, 2016.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards to initiate the necessary procedures. Please also note that any person wishing to bring a laptop computer or tablet into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. Persons may also attend the public meeting via webinar. For more information, refer to section VII, "Public Participation," near the end of this notice.

Instructions: Any comments submitted must identify the NOPR on Energy Conservation Standards for Commercial Water Heating Equipment, and provide docket number EERE–2014–BT–STD–0042 and/or regulatory information number (RIN) number 1904–AD34. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: ComWaterHeating2014STD0042@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC, 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC, 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Office of Energy Efficiency and Renewable Energy through the methods listed above and by email to *Chad_S._Whiteman@omb.eop.gov.*

EPCA requires the Attorney General to provide DOE a written determination of whether the proposed standard is likely to lessen competition. The U.S. Department of Justice Antitrust Division invites input from market participants and other interested persons with views on the likely competitive impact of the proposed standard. Interested persons may contact the Division at *energy.standards@usdoj.gov* before June 30, 2016. Please indicate in the "Subject" line of your email the title and Docket Number of this rulemaking notice.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section VII of this document (Public Participation).

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index may not be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0042.* This Web page contains a link to the docket for this document on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section VII, "Public Participation," for further information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: *Ashley.Armstrong@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121.

Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov.*

For information on how to submit or review public comments and the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

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I. Synopsis of the Proposed Rule

Title III, Part C[1] of the Energy Policy and Conservation Act of 1975 ("EPCA" or "the Act"), Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment,[2] which sets forth a variety of provisions designed to improve energy efficiency. These encompass several types of commercial heating, air-conditioning, and water heating equipment, including the classes of CWH equipment that are the subject of this rulemaking. (42 U.S.C. 6311(1)(K)) CWH equipment is also covered under the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1 (ASHRAE Standard 90.1), "Energy Standard for Buildings Except Low-Rise Residential Buildings."

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[1] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015 (EEIA 2015), Public Law 114–11 (April 30, 2015).

EPCA, as amended by the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, requires DOE to conduct an evaluation of its standards for CWH equipment every 6 years and to publish either a notice of determination that such standards do not need to be amended or a notice of proposed rulemaking including proposed amended standards (42 U.S.C. 6313(a)(6)(C)(i)) Pursuant to these statutory requirements, DOE initiated this rulemaking to evaluate the energy conservation standards for covered CWH equipment and to determine whether new or amended standards are warranted.[3]

In addition, EPCA, as amended, also requires DOE to consider amending the existing Federal energy conservation standards for certain types of listed commercial and industrial equipment (generally, commercial water heaters, commercial packaged boilers, commercial air-conditioning and heating equipment, and packaged terminal air conditioners and heat pumps) each time ASHRAE Standard 90.1 is amended with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) For each type of equipment, EPCA directs that if ASHRAE Standard 90.1 is amended, DOE must publish in the **Federal Register** an analysis of the energy savings potential of amended energy conservation standards within 180 days of the amendment of ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(A)(i)) EPCA further directs that DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more-stringent efficiency level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE decides to adopt as a national standard the efficiency levels specified in the amended ASHRAE Standard 90.1, DOE must establish such a standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) If DOE determines that a more-stringent standard is appropriate under the statutory criteria, DOE must establish such more-stringent standard not later than 30 months after publication of the revised ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(B)(i))

On October 9, 2013, ASHRAE officially released ASHRAE Standard 90.1–2013, which, among other things, amended standard levels for commercial oil-fired storage water heaters greater than 105,000 Btu/h and less than 4,000 Btu/h/gal, a category of CWH equipment covered under EPCA, thereby triggering DOE's statutory obligation to promulgate an amended uniform national standard at those levels, unless DOE determines that there is clear and convincing evidence supporting the adoption of more-stringent energy conservation standards than the ASHRAE Standard 90.1 levels. Pursuant to 42 U.S.C. 6313(a)(6), DOE determined in a final rule published on July 17, 2015 ("July 2015 ASHRAE equipment final rule") that a more-stringent thermal efficiency standard than the ASHRAE 90.1–2013 standard level for commercial oil-fired water heaters is not justified. 80 FR 42614. Therefore, DOE adopted the ASHRAE 90.1–2013 thermal efficiency standard for commercial oil-fired storage water heaters in the Code of Federal Regulations (CFR) at 10 CFR 431.110 with a compliance date of October 9, 2015. *Id.* In this NOPR, DOE proposes to maintain the standard levels for commercial oil-fired storage water heaters adopted in that final rule. For the other types of CWH equipment,[4] DOE was not triggered by ASHRAE action in adopting ASHRAE Standard 90.1–2013, so for those equipment classes, DOE proceeded under its 6-year-look-back authority. (42 U.S.C. 6313(a)(6)(C)(i))

Also relevant here, the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012), amended EPCA to require that DOE publish a final rule establishing a uniform efficiency descriptor and accompanying test methods for covered residential water heaters and some CWH equipment. (42 U.S.C. 6295(e)(5)(B)) EPCA further requires the final rule must replace the current energy factor (for residential water heaters) and thermal efficiency and standby loss (for some commercial water heaters) metrics with a uniform efficiency descriptor. (42 U.S.C. 6295(e)(5)(C))

Pursuant to 42 U.S.C. 6295(e), on July 11, 2014, DOE published a final rule for test procedures for residential and certain commercial water heaters ("July 2014 final rule") that, among other things, established the uniform energy factor (UEF), a revised version of the current residential energy factor metric, as the uniform efficiency descriptor required by AEMTCA. 79 FR 40542, 40578. In addition, the July 2014 final rule defined the term "residential-duty commercial water heater," an equipment type that is subject to the new UEF metric and the corresponding UEF test procedures. 79 FR 40542, 40586–88 (July 11, 2014). DOE excludes from the UEF covered CWH equipment that is not a residential-duty commercial water heater. *Id.* Further details on the UEF metric and residential-duty commercial water heaters are discussed in section III.B of this document. For this NOPR, DOE analyzed and developed potential energy conservation standards for residential-duty commercial water heaters in terms of the current thermal efficiency and standby loss metrics because there are currently not sufficient test data for residential-duty commercial water heaters rated in UEF that DOE could use in its analyses for this NOPR. However, in a NOPR published on April 14, 2015 ("April 2015 NOPR"), DOE proposed, among other things, conversion factors from thermal efficiency and standby loss to UEF for residential-duty commercial water heaters. 80 FR 20116, 20143. DOE applied these conversion factors in converting the proposed standards for residential-duty commercial water heaters to UEF in this rulemaking. All other CWH equipment classes continue to have standards measured in terms of the thermal efficiency and standby loss metrics, with the exception of unfired hot water storage tanks, for which the energy conservation standard is a minimum R-value requirement for tank insulation.

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[3] As explained in further detail in section II.B.1, DOE most recently issued a final rule amending standards for commercial oil-fired storage water heaters on June 30, 2015, which was published in the **Federal Register** on July 17, 2015. 80 FR 42614. However, for all of the other water heating equipment that is the subject of this rulemaking, DOE last issued a final rule amending standards on January 4, 2001, which was published in the **Federal Register** on January 12, 2001. 66 FR 3336.

[4] Other types of CWH equipment include commercial electric storage water heaters, commercial gas-fired storage water heaters, residential-duty gas-fired storage water heaters, commercial gas-fired instantaneous water heaters and hot water supply boilers, commercial oil-fired instantaneous water heaters and hot water supply boilers, and commercial electric instantaneous water heaters. Commercial heat pump water heaters and unfired hot water storage tanks were not considered in this NOPR and energy conservations standards for these classes will be considered in a future rulemaking(s). Commercial electric instantaneous water heaters and commercial oil-fired instantaneous water heaters and hot water supply boilers were not analyzed for amended energy conservation standards in this NOPR because DOE determined amendment of standards for these classes would result in negligible energy savings. Section III.C includes further discussion on the scope of equipment classes analyzed in this NOPR.

Pursuant to EPCA, any new or amended energy conservation standard that DOE prescribes for CWH equipment shall be designed to achieve significant additional conservation of energy that DOE determines, supported by clear and convincing evidence, is both technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II) and (C)) In accordance with these and other statutory provisions discussed in this document, DOE has examined all of the CWH equipment classes (except for commercial oil-fired water heaters, which were addressed in a separate rulemaking, as noted above, and unfired hot water storage tanks, which will be examined in a separate rulemaking, as discussed in section III.C.4). Because DOE did not analyze amended energy conservations standards for unfired hot water storage tanks in this rule, DOE proposes to maintain the current R–12.5 minimum thermal insulation requirement for this class. DOE has tentatively concluded that more-stringent standards for commercial gas-fired storage water heaters, residential-duty commercial gas-fired storage water heaters, gas-fired instantaneous water heaters and hot water supply boilers, and electric storage water heaters are warranted. Accordingly, DOE is proposing amended energy conservation standards for these classes of CWH equipment. The proposed standards, if adopted, would apply to all equipment listed in Table I.1 and Table I.2 and manufactured in, or imported into, the United States on and after the compliance date of the standards (*i.e.*, 3 years after the publication date of the final rule). As shown in Table I.1 and Table I.2, the proposed standards are expressed in terms of: (1) Thermal efficiency, which describes the ratio of the heat energy (Btu/h) transferred to the water flowing through the water heater to the amount of energy (Btu/h) consumed by the water heater; (2) standby loss, which is the average hourly energy, expressed in Btu per hour, required to maintain the stored water temperature; or (3) uniform energy factor, which is a uniform efficiency descriptor that replaces thermal efficiency and standby loss for residential-duty commercial water heaters.

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL WATER HEATING EQUIPMENT EXCEPT FOR RESIDENTIAL-DUTY COMMERCIAL WATER HEATERS

Equipment	Specifications **	Energy conservation standards *		Compliance date
		Minimum thermal efficiency (percent)	Maximum standby loss	
Electric storage water heaters	All	N/A	$0.84 \times [0.30 + 27/V_r]$ (%/h)	3 years after publication of final rule.
Gas-fired storage water heaters.	All ***	95	$0.63 \times [Q/800 + 110(V_r)^{1/2}]$ (Btu/h).	3 years after publication of final rule.
Oil-fired storage water heaters.	All ***	80	$Q/800 + 110(V_r)^{1/2}$ (Btu/h)	10/09/2015 †.
Electric instantaneous water heaters.	<10 gal ***	80	N/A	01/01/1994 †.
	≥10 gal	77	$2.30 + 67/V_r$ (%/h)	01/01/1994 †.
Gas-fired instantaneous water heaters and hot water supply boilers:				
Instantaneous water heaters (other than storage-type) and hot water supply boilers.	<10 gal	94	N/A	3 years after publication of final rule.
Instantaneous water heaters (other than storage-type) and hot water supply boilers.	≥10 gal	94	$Q/800 + 110(V_r)^{1/2}$ (Btu/h)	3 years after publication of final rule †††.
Storage-type instantaneous water heaters ††.	≥10 gal	95	$0.63 \times [Q/800 + 110(V_r)^{1/2}]$ (Btu/h).	3 years after publication of final rule.
Oil-fired instantaneous water heaters and hot water supply boilers:				
Instantaneous water heaters and hot water supply boilers.	<10 gal	80	N/A	10/09/2015 †
Instantaneous water heaters and hot water supply boilers.	≥10 gal	78	$Q/800 + 110(V_r)^{1/2}$ (Btu/h)	10/29/2003 †.

*V_r is the rated volume in gallons. Q is the fuel input rate in Btu/h.

**These specifications only distinguish between classes of CWH equipment. The different classifications for consumer water heaters and commercial water heating equipment are specified by the definitions codified at 10 CFR 430.2 and 10 CFR 431.102, respectively.

***These standards only apply to commercial water heating equipment that does not meet the definition of "residential-duty commercial water heater." See Table I.2 for energy conservation standards proposed for residential-duty commercial water heaters.

† Amended standards for these equipment classes were not analyzed in this NOPR. Section III.C includes a discussion of the scope of equipment analyzed in this NOPR. Standards for electric instantaneous water heaters are included in EPCA. (42 U.S.C. 6313(a)(5)(D)–(E)) In this NOPR, DOE proposes to codify these standards for electric instantaneous water heaters in its regulations at 10 CFR 431.110. Further discussion of standards for electric instantaneous water heaters is included in section III.C.5.

†† DOE proposes a new equipment class for storage-type instantaneous water heaters. This class of equipment is similar to storage water heaters in design, cost, and application. However, it has a ratio of input capacity to storage volume greater than or equal to 4,000 Btu/h per gallon of water stored; therefore, it is properly classified as an instantaneous water heater by EPCA's definition at 42 U.S.C. 6311(12)(B). Because of its similarities with storage water heaters, DOE grouped these two equipment classes together in its analyses for this NOPR. Storage-type instantaneous water heaters are further discussed in section IV.A.2.a.

††† Amended standby loss standards for instantaneous gas-fired water heaters and hot water supply boilers with greater than or equal to 10 gal water stored other than storage-type instantaneous water heaters were not analyzed in this NOPR. Section III.C.8 includes a discussion of the coverage of instantaneous water heaters and hot water supply boilers in this NOPR.

TABLE I.2—PROPOSED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL-DUTY COMMERCIAL WATER HEATERS

Equipment	Specification *	Draw pattern **	Uniform energy factor †	Compliance date
Gas-fired Storage †	>75 kBtu/h and ≤105 kBtu/h and ≤120 gal and ≤180 °F.	Very Small	$0.4618 - (0.0010 \times Vr)$	3 years after publication of final rule.
		Low	$0.6626 - (0.0009 \times Vr)$	3 years after publication of final rule.
		Medium	$0.6996 - (0.0007 \times Vr)$	3 years after publication of final rule.
		High	$0.7311 - (0.0006 \times Vr)$	3 years after publication of final rule.
Oil-fired storage	>105 kBtu/h and ≤140 kBtu/h and ≤120 gal and ≤180 °F.	Very Small	$0.3206 - (0.0006 \times V_r)$	Conversion factor final rule publication date.††
		Low	$0.5577 - (0.0019 \times V_r)$	Conversion factor final rule publication date.††
		Medium	$0.6027 - (0.0019 \times V_r)$	Conversion factor final rule publication date.††
		High	$0.5446 - (0.0018 \times V_r)$	Conversion factor final rule publication date.††

* To be classified as a residential-duty water heater, a commercial water heater must, if requiring electricity, use single-phase external power supply, and not be designed to heat water at temperatures greater than 180 °F.

** Draw pattern is a classification of hot water use of a consumer water heater or residential-duty commercial water heater, based upon the first-hour rating. The draw pattern is determined using the Uniform Test Method for Measuring the Energy Consumption of Water Heaters in Appendix E to Subpart B of 10 CFR part 430.

† Energy conservation standards for residential-duty commercial gas-fired storage water heaters at all four draw patterns were converted from the thermal efficiency and standby loss metrics to the new UEF metric using the conversion factors proposed by DOE in the April 2015 NOPR. 80 FR 20116, 20143 (April 14, 2015). In these equations, Vr is the rated storage volume.

†† Energy conservation standards in terms of UEF for residential-duty oil-fired storage water heaters will be established in a final rule for consumer water heaters and certain commercial water heaters, along with mathematical conversion factors for determining UEF. (See Docket No. EERE–2015–BT–TP–0007)

A. Benefits and Costs to Commercial Consumers

Table I.3 presents DOE's evaluation of the economic impacts of the proposed energy conservation standards on commercial consumers of CWH equipment, as measured by the average life-cycle cost (LCC) savings and the simple payback period (PBP).[5] The average LCC savings are positive for the standards DOE is proposing in this NOPR for all CWH equipment classes considered in this document. The estimated PBP for all proposed equipment classes are also less than the projected average lifetime of each equipment class, which varies from 10 to 25 years.

TABLE I.3—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON COMMERCIAL CONSUMERS OF COMMERCIAL WATER HEATING EQUIPMENT

Equipment class	Average LCC savings 2014$	Simple payback period years	Average lifetime years
Commercial gas-fired storage water heaters and storage-type instantaneous water heaters *	794	4.3	10
Residential-duty gas-fired storage water heaters	14	11.9	12
Gas-fired instantaneous water heaters and hot water supply boilers **	3,488	5.6	22.6
Tankless water heaters	1,119	Immediate †	17
Hot water supply boilers	4,528	6.4	25
Electric storage water heaters	47	6.5	12

* DOE proposes a new equipment class for storage-type instantaneous water heaters, which are similar to storage water heaters with a ratio of input capacity to storage volume greater than or equal to 4,000 Btu/h per gallon of water stored. Storage-type instantaneous water heaters are further discussed in section IV.A.2.a.

** Average LCC and PBP for the gas-fired instantaneous water heaters and hot water supply boilers class reflect use of shipment-weighted inputs to these calculated values to provide results for the class as a whole. Average lifetime of the gas-fired instantaneous water heaters and hot water supply boilers equipment class was a shipment-weighted average of the tankless water heater and hot water supply boiler lifetimes.

† Immediate payback can result from a decrease in installation cost that is greater than the incremental increase in equipment cost.

DOE's analysis of the impacts of the proposed standards on commercial consumers is described in section IV.F of this document.

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[5] The average LCC savings are measured relative to the no-new-standards-case efficiency distribution, which depicts the commercial water heating market in the compliance year in the absence of amended standard levels (see section IV.H.1 and chapter 8H of the TSD). The simple PBP, which is designed to compare specific efficiency levels for CWH equipment, is aggregate average payback measured relative to baseline CWH equipment (see section IV.F.3 and chapter 8 of the TSD).

B. Impact on Manufacturers

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2015 to 2048). Using a real discount rate of 9.1 percent,[6] DOE estimates that the INPV for CWH equipment manufacturers is $176.2 million in 2014$ using DOE's current standards as a baseline. Under the proposed standards, DOE expects that the change in INPV will range from 5.0 percent to -13.3 percent, which is approximately equivalent to an increase of $8.8 million to a reduction of $23.4 million. Industry conversion costs are expected to total $29.8 million. Additional detail on DOE's calculations of INPV for CWH equipment manufacturers can be found in section V.B.2 of this NOPR and chapter 12 of the NOPR TSD. Based on DOE's interviews with CWH equipment manufacturers, DOE does not expect any plant closings or significant loss of employment to result from the proposed standards.

C. National Benefits and Costs[7]

DOE's analyses indicate that the proposed energy conservation standards for CWH equipment would save a significant additional amount of energy. The cumulative lifetime energy savings for CWH equipment shipped in the 30-year period[8] (which begins in the first full year of compliance with amended standards relative to the no-new-standards case without amended standards) amount to 1.8 quadrillion British thermal units (quads[9]) of cumulative full-fuel-cycle energy. This is a savings of 8 percent relative to the energy use of this equipment[10] in the case without amended standards. More details on energy savings can be found in chapter 10 of the NOPR TSD and sections IV.H, IV.L, and V.B.3 of this document.

The cumulative net present value (NPV) of total commercial consumer costs and savings of the proposed CWH equipment standards in 2014$ ranges from $2.26 billion (at a 7-percent discount rate) to $6.75 billion (at a 3-percent discount rate), respectively. This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased equipment costs for CWH equipment shipped in 2019–2048 discounted back to the current year (2015). Chapter 10 of the NOPR TSD provides more details on the NPV analyses.

In addition, the proposed standards would have significant environmental benefits. The energy savings are estimated to result in cumulative emission reductions (over the same period as for energy savings) of 98 million metric tons (Mt)[11] of carbon dioxide (CO_2), 1,172 thousand tons of methane (CH_4), 0.2 thousand tons of nitrous oxide (N_2O), 1.6 thousand tons of sulfur dioxide (SO_2), 316 thousand tons of nitrogen oxides (NO_X), and 0.004 tons of mercury (Hg).[12] The cumulative reduction in CO_2 emissions through 2030 amounts to 15 Mt, which is equivalent to the emissions resulting from the annual electricity use of 2.1 million homes. More detailed emissions analysis results can be found in chapter 13 of the NOPR TSD.

The value of the CO_2 reductions is calculated using a range of values per metric ton of CO_2 (otherwise known as the Social Cost of Carbon, or SCC) developed by a recent Federal interagency process.[13] The derivation of the SCC values is discussed in section IV.L of this NOPR. Using discount rates appropriate for each set of SCC values, DOE estimates that the present monetary value of the CO_2 emissions reduction described above is between $0.64 and $9.11 billion, with a value of $2.99 billion using the central SCC case represented by $40.0 per metric ton in 2015.[14] Additionally, DOE estimates the present monetary value of the NO_X emissions reduction to be from $373 million at a 7-percent discount rate to $970 million at a 3-percent discount rate.[15] More detailed results can be found in chapter 14 of the NOPR TSD.

Table I.4 summarizes the national economic benefits and costs expected to result from this NOPR's proposed standards for CWH equipment.

TABLE I.4—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED COMMERCIAL WATER HEATING EQUIPMENT ENERGY CONSERVATION STANDARDS (TSL 3) *

Category	Present value billion 2014$	Discount rate %
Benefits		
Commercial Consumer Operating Cost Savings	3.7	7
	9.3	3

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[6] DOE estimated preliminary financial metrics, including the industry discount rate, based on data in Securities and Exchange Commission (SEC) filings and on industry-reviewed values published in prior water heating equipment final rules. DOE presented the preliminary financial metrics to manufacturers in manufacturer impact analysis (MIA) interviews. DOE adjusted those values based on feedback from manufacturers. The complete set of financial metrics and more detail about the methodology can be found in chapter 12 of the NOPR TSD.

[7] All monetary values in this section are expressed in 2014 dollars and, where appropriate, are discounted to 2015 unless explicitly stated otherwise. Energy savings in this section refer to the full-fuel-cycle savings (see section IV.H for discussion). National benefits of DOE's proposed standard levels are presented as compared to the current Federal standard levels as baseline.

[8] The 30-year analysis period is 2019–2048 for electric and gas-fired CWH equipment.

[9] A quad is equal to 10^{15} British thermal units (Btu).

[10] The no-new-standards-case assumptions are described in section IV.H.1 of this notice.

[11] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[12] DOE calculated emissions reductions relative to the no-new-standards case, which reflects key assumptions in the *Annual Energy Outlook 2015* (*AEO 2015*) Reference case. *AEO 2015* generally represents current legislation and environmental regulations for which implementing regulations were available as of October 31, 2014.

[13] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866*, Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised July 2015) (Available at: *https://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf).*

[14] The values only include CO_2 emissions; CO_2 equivalent emissions from other greenhouse gases are not included.

[15] DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, "Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants," published in June 2014 by EPA's Office of Air Quality Planning and Standards. (Available at *www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal0602.pdf.*) See section IV.L.2 for further discussion. Note that the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electricity Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al. 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al. 2011), the values would be nearly two-and-a-half times larger. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emissions, DOE intends to investigate refinements to the agency's current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule. Note that DOE is currently investigating valuation of avoided SO_2 and Hg emissions.

TABLE I.4—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED COMMERCIAL WATER HEATING EQUIPMENT ENERGY CONSERVATION STANDARDS (TSL 3) *—Continued

Category	Present value billion 2014$	Discount rate %
CO_2 Reduction (using mean SCC at 5% discount rate) **	0.6	5
CO_2 Reduction (using mean SCC at 3% discount rate) **	3.0	3
CO_2 Reduction (using mean SCC at 2.5% discount rate) **	4.8	2.5
CO_2 Reduction (using 95th percentile SCC at 3% discount rate) **.	9.1	3 (95th percentile)
NO_X Reduction †	0.4	7
	1.0	3
Total Benefits ††	7.1	7
	13.2	3
Costs		
Incremental Equipment Costs	1.5	7
	2.5	3
Total Net Benefits		
Including CO_2 and NO_X Reduction Monetized Value †	5.6	7
	10.7	3

* This table presents the costs and benefits associated with CWH equipment shipped in 2019–2048. These results include benefits to consumers that accrue after 2048 from the equipment purchased in 2019–2048. The incremental installed costs include incremental equipment cost as well as installation costs. The CO_2 reduction benefits are global benefits due to actions that occur nationally.

** The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the integrated assessment models, at discount rates of 5, 3, and 2.5 percent. For example, for 2015 emissions, these values are $12.2/metric ton, $40.0/metric ton, and $62.3/metric ton, in 2014$, respectively. The fourth set ($117 per metric ton in 2014$ for 2015 emissions), which represents the 95th percentile of the SCC distribution calculated using SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. See section IV.L.1 for more details.

† The $/ton values used for NO_X are described in section IV.L. DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, "Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants," published in June 2014 by EPA's Office of Air Quality Planning and Standards. (Available at *www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal0602.pdf*.) See section IV.L.2 for further discussion. Note that the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al. 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al. 2011), the values would be nearly two-and-a-half times larger. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emissions, DOE intends to investigate refinements to the agency's current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule.

†† Total benefits for both the 3-percent and 7-percent cases are presented using only the average SCC with 3-percent discount rate.

The benefits and costs of the proposed energy conservation standards, for CWH equipment shipped in 2019–2048, can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are the sum of: (1) The national economic value of the benefits in reduced operating costs, minus (2) the increase in equipment purchase prices and installation costs, plus (3) the value of the benefits of CO_2 and NO_X emission reductions, all annualized.[16]

The national operating savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing this equipment. The national operating cost savings is measured for the lifetime of CWH equipment shipped in 2019–2048.

The CO_2 reduction is a benefit that accrues globally due to decreased domestic energy consumption that is expected to result from this rule. Because CO_2 emissions have a very long residence time in the atmosphere,[17] the SCC values in future years reflect future CO_2-emissions impacts that continue beyond 2100 through 2300.

Estimates of annualized benefits and costs of the proposed standards (over a 30-year period) are shown in Table I.5. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate along with the average SCC series that has a value of $40.0 per metric ton in 2015), the estimated cost of the CWH standards proposed in this document is $144 million per year in increased equipment costs, while the estimated benefits are $367 million per year in reduced equipment operating costs, $166 million per year from CO_2 reductions, and $37 million per year from reduced NO_X emissions. In this case, the annualized net benefit amounts to $427 million per year. Using a 3-percent discount rate for all benefits and costs and the average SCC series that has a value of $40.0 per metric ton in 2015, the estimated cost of the CWH standards proposed in this NOPR is $141 million per year in increased equipment costs, while the benefits are $517 million per year in reduced operating costs, $166 million from CO_2 reductions, and $54 million in reduced NO_X emissions. In this case, the net benefit amounts to $597 million per year.

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[16] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2015, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2020 or 2030), and then discounted the present value from each year to 2015. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates, as shown in Table I.3. Using the present value, DOE then calculated the fixed annual payment over a 30-year period starting in the compliance year that yields the same present value.

[17] The atmospheric lifetime of CO_2 is estimated to be on the order of 30–95 years. Jacobson, MZ, "Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming,'" *J. Geophys. Res.* 110. pp. D14105 (2005).

TABLE I.5—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL WATER HEATING EQUIPMENT (TSL 3)*

	Discount rate %	Primary estimate	Low net benefits estimate	High net benefits estimate
			million 2014$/year	*million 2014$/year*
		Benefits		
Commercial Consumer Operating Cost Savings.	7	367	336	411.
	3	517	465	588.
CO_2 Reduction (using mean SCC at 5% discount rate)*,**.	5	48	46	50.
CO_2 Reduction (using mean SCC at 3% discount rate)*,**.	3	166	159	176.
CO_2 Reduction (using mean SCC at 2.5% discount rate)*,**.	2.5	245	234	259.
CO_2 Reduction (using 95th percentile SCC at 3% discount rate)*,**.	3	508	485	536.
NO_X Reduction†	7	37	35	86.
	3	54	52	126.
Total Benefits††	7% plus CO_2 range	452 to 912	417 to 855	547 to 1,033.
	7	571	530	673.
	3% plus CO_2 range	619 to 1,079	563 to 1,001	765 to 1,251.
	3	737	676	890.
		Costs		
Commercial Consumer Incremental Equipment Costs.	7	144	147	142.
	3	141	144	138.
		Net Benefits/Costs		
Total††	7% plus CO_2 range	308 to 768	270 to 709	406 to 892.
	7	427	383	531.
	3% plus CO_2 range	478 to 938	419 to 857	627 to 1,113.
	3	597	532	752.

* This table presents the annualized costs and benefits associated with CWH equipment shipped in 2019–2048. These results include benefits to commercial consumers that accrue after 2048 from the equipment shipped in 2019–2048. The Primary, Low Benefits, and High Benefits Estimates for operating cost savings utilize projections of energy prices and building growth (leading to higher shipments) from the *AEO 2015* reference case, Low Estimate, and High Estimate, respectively. In addition, DOE used a constant price assumption as the default price projection; the cost to manufacture a given unit of higher efficiency neither increases nor decreases over time. The analysis of the price trends is described in section IV.F.2.a and appendix 10B of the NOPR TSD.

** The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the integrated assessment models, at discount rates of 5, 3, and 2.5 percent. For example, for 2015 emissions, these values are $12.2/metric ton, $40.0/metric ton, and $62.3/metric ton, in 2014$, respectively. The fourth set ($117 per metric ton in 2014$ for 2015 emissions), which represents the 95th percentile of the SCC distribution calculated using SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The SCC values are emission year specific. See section IV.L for more detail.

† The $/ton values used for NO_X are described in section IV.L. DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, "Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants," published in June 2014 by EPA's Office of Air Quality Planning and Standards. (Available at *www3.epa.gov/ttnecas1/regdata/RIAs/*111dproposalRIAfinal0602.pdf.) See section IV.L.2 for further discussion. Note that the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al. 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al. 2011), the values would be nearly two-and-a-half times larger. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emissions, DOE intends to investigate refinements to the agency's current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule.

†† Total benefits for both the 3-percent and 7-percent cases are presented using only the average SCC with a 3-percent discount rate. In the rows labeled "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

D. Conclusion

DOE has tentatively concluded that, based upon clear and convincing evidence, the proposed standards for the CWH equipment classes evaluated in this rulemaking represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant additional conservation of energy. DOE further notes that equipment achieving these standard levels is already commercially available for all equipment classes covered by this proposal. Based on the analytical results described in this section, DOE has tentatively concluded that the benefits of the proposed standards to the Nation (*i.e.*, energy savings, positive NPV of commercial consumer benefits, commercial consumer LCC savings, and emission reductions) would outweigh the burdens (loss of INPV for manufacturers).

DOE also considered more-stringent energy efficiency levels as trial standard levels, and is still considering them in this rulemaking. However, DOE has tentatively concluded that the potential burdens of the more-stringent energy efficiency levels would outweigh the projected benefits. Based on consideration of the public comments DOE receives in response to this document and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this document that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

II. Introduction

The following section briefly discusses the statutory authority underlying this proposal, as well as some of the relevant historical background related to the establishment of standards for CWH equipment.

A. Authority

Title III, Part C[18] of the Energy Policy and Conservation Act of 1975 ("EPCA" or "the Act"), Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, § 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. These encompass several types of heating, air-conditioning, and water heating equipment, including the classes of CWH equipment that are the subject of this rulemaking.[19] (42 U.S.C. 6311(1)(K)) In general, this program addresses the energy efficiency of certain types of commercial and industrial equipment. Relevant provisions of the Act specifically include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labelling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

The initial Federal energy conservation standards and test procedures for CWH equipment were added to EPCA by the Energy Policy Act of 1992 (EPACT 1992), Public Law 102–486. (42 U.S.C. 6313(a)(5) and 42 U.S.C. 6314(a)(4)(A)) These initial CWH standards mirrored the levels and equipment classes in ASHRAE Standard 90.1–1989.

In acknowledgment of technological changes that yield energy efficiency benefits, the U.S. Congress further directed DOE through EPCA to evaluate and consider amending its energy conservation standards for certain commercial and industrial equipment (*i.e.,* specified heating, air-conditioning, and water heating equipment) each time ASHRAE Standard 90.1 is updated with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) Such review is to be conducted in accordance with the statutory procedures set forth in 42 U.S.C. 6313(a)(6)(B). Pursuant to 42 U.S.C. 6313(a)(6)(A), for CWH equipment, EPCA directs that if ASHRAE Standard 90.1 is amended, DOE must publish in the **Federal Register** an analysis of the energy savings potential of amended energy conservation standards within 180 days of the amendment of ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(A)(i)) EPCA further directs that DOE must adopt amended standards at the new efficiency level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more-stringent level would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE decides to adopt as a national standard the efficiency levels specified in the amended ASHRAE Standard 90.1, DOE must establish such standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) If DOE determines that a more-stringent standard is appropriate under the statutory criteria, DOE must establish such more-stringent standard not later than 30 months after publication of the revised ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(B)(i))

In addition, DOE notes that pursuant to the EISA 2007 amendments to EPCA, the agency must periodically review its already-established energy conservation standards for covered ASHRAE equipment and publish either a notice of proposed rulemaking with amended standards or a determination that the standards do not need to be amended. (42 U.S.C. 6313(a)(6)(C)(i)) In December 2012, this provision was further amended by AEMTCA to clarify that DOE's periodic review of ASHRAE equipment must occur "[e]very six years." (42 U.S.C. 6313(a)(6)(C)(i)) AEMTCA also modified EPCA to specify that any amendments to the design requirements with respect to the ASHRAE equipment would trigger DOE review of the potential energy savings under 42 U.S.C. 6313(a)(6)(A)(i). AEMTCA also added a requirement that DOE must initiate a rulemaking to consider amending the energy conservation standards for any covered equipment for which more than 6 years has elapsed since the issuance of the most recent final rule establishing or amending a standard for the product as of the date of AEMTCA's enactment (*i.e.,* December 18, 2012), in which case DOE must publish either: (1) a notice of determination that the current standards do not need to be amended, or (2) a notice of proposed rulemaking containing proposed standards. (42 U.S.C. 6313(a)(6)(C)(vi))

DOE published the most recent final rule for energy conservation standards for CWH equipment on January 12, 2001 ("January 2001 final rule"), which adopted efficiency levels in ASHRAE Standard 90.1–1999. 66 FR 3336, 3356. Because more than 6 years have passed since issuance of the last final rule for CWH equipment, DOE is required to publish either a notice of determination that the current standards for these equipment types do not need to be amended, or a notice of proposed rulemaking proposing amended energy conservation standards for these equipment types.

When setting standards for the equipment addressed by this document, EPCA, as amended by AEMTCA, prescribes specific statutory criteria for DOE to consider when determining whether an amended standard level more stringent than that in ASHRAE Standard 90.1 is economically justified. See generally 42 U.S.C. 6313(a)(6)(A)–(C). First, EPCA requires that any amended standards for CWH equipment must be designed to achieve significant additional conservation of energy that DOE determines, supported by clear and convincing evidence, and be both technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II) and (C)) Furthermore, DOE may not adopt any standard that would increase the maximum allowable energy use or decrease the minimum required energy efficiency of covered equipment. (42 U.S.C. 6313(a)(6)(B)(iii)(I) and (C)(i)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens by considering, to the maximum extent practicable, the following seven statutory factors:

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[18] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[19] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015 (EEIA 2015), Public Law 114–11 (April 30, 2015).

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the product in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses of the products likely to result from the standard;

(3) The total projected amount of energy savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6313(a)(6)(B)(ii) and (C)(i))

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of covered equipment. (42 U.S.C. 6314) Specifically, EPCA requires that if a test procedure referenced in ASHRAE Standard 90.1 is updated, DOE must update its test procedure to be consistent with the amended test procedure in ASHRAE Standard 90.1, unless DOE determines that the amended test procedure is not reasonably designed to produce test results that reflect the energy efficiency, energy use, or estimated operating costs of the ASHRAE equipment during a representative average use cycle. In addition, DOE must determine that the amended test procedure is not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2) and (4)) Manufacturers of covered equipment must use the prescribed DOE test procedure as the basis for certifying to DOE that their equipment complies with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of such equipment. (42 U.S.C. 6314(d)) Similarly, DOE must use these test procedures to determine whether the equipment complies with standards adopted pursuant to EPCA. The DOE test procedure for CWH equipment currently appears at 10 CFR 431.106.

EPCA, as codified, also contains what is known as an "anti-backsliding" provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6313(a)(6)(B)(iii)(I) and (C)(i)) Furthermore, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa) and (C)(i))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional costs to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and, as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure.

Additionally, EPCA specifies criteria when promulgating a standard for a type or class of covered equipment that has two or more subcategories that may justify different standard levels. DOE must specify a different standard level than that which applies generally to such type or class of equipment for any group of covered products that has the same function or intended use if DOE determines that products within such group: (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and which justifies a higher or lower standard. In determining whether a performance-related feature justifies a different standard for a group of products, DOE generally considers such factors as the utility to the commercial consumer of the feature and other factors DOE deems appropriate. In a rule prescribing such a standard, DOE includes an explanation of the basis on which such higher or lower level was established. DOE considered these criteria in the context of this rulemaking.

Other than the exceptions specified in 42 U.S.C. 6316, Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards for covered CWH equipment. (42 U.S.C. 6316(b))

B. Background

1. Current Standards

As noted above, DOE most recently amended energy conservation standards for certain CWH equipment in the July 2015 ASHRAE equipment final rule. 80 FR 42614, 42667 (July 17, 2015). The current standards for all CWH equipment classes are set forth in Table II.1.

TABLE II.1—CURRENT FEDERAL ENERGY CONSERVATION STANDARDS FOR CWH EQUIPMENT

Product	Size	Energy conservation standards *	
		Minimum thermal efficiency (equipment manufactured on and after October 9, 2015) ** † (%)	Maximum standby loss (equipment manufactured on and after October 29, 2003) ** ††
Electric storage water heaters	All	N/A	$0.30 + 27/V_m$ (%/h)
Gas-fired storage water heaters	≤155,000 Btu/h	80	$Q/800 + 110(V_r)^{1/2}$ (Btu/h)
	>155,000 Btu/h	80	$Q/800 + 110(V_r)^{1/2}$ (Btu/h)
Oil-fired storage water heaters	≤155,000 Btu/h	80†	$Q/800 + 110(V_r)^{1/2}$ (Btu/h)
	>155,000 Btu/h	80†	$Q/800 + 110(V_r)^{1/2}$ (Btu/h)

TABLE II.1—CURRENT FEDERAL ENERGY CONSERVATION STANDARDS FOR CWH EQUIPMENT—Continued

Product	Size	Energy conservation standards*	
		Minimum thermal efficiency (equipment manufactured on and after October 9, 2015)** † (%)	Maximum standby loss (equipment manufactured on and after October 29, 2003)** ††
Electric instantaneous water heaters†††	<10 gal	80	N/A
	≥10 gal	77	2.30 + 67/V_m (%/h)
Gas-fired instantaneous water heaters and hot water supply boilers.	<10 gal	80	N/A
	≥10 gal	80	Q/800 + 110(V_r)½ (Btu/h)
Oil-fired instantaneous water heater and hot water supply boilers	<10 gal	80	N/A
	≥10 gal	78	Q/800 + 110(V_r)½ (Btu/h)
		Minimum thermal insulation	
Unfired hot water storage tank	All	R–12.5	

* V_m is the measured storage volume, and V_r is the rated volume, both in gallons. Q is the nameplate input rate in Btu/h.

** For hot water supply boilers with a capacity of less than 10 gallons: (1) The standards are mandatory for products manufactured on an after October 21, 2005 and (2) products manufactured prior to that date, and on or after October 23, 2003, must meet either the standards listed in this table or the applicable standards in Subpart E of this Part for a "commercial packaged boiler."

† For oil-fired storage water heaters: (1) The standards are mandatory for equipment manufactured on and after October 9, 2015 and (2) equipment manufactured prior to that date must meet a minimum thermal efficiency level of 78 percent.

†† Water heaters and hot water supply boilers having more than 140 gallons of storage capacity need not meet the standby loss requirement if: (1) The tank surface area is thermally insulated to R–12.5 or more, (2) a standing pilot light is not used, and (3) for gas or oil-fired storage water heaters, they have a fire damper or fan assisted combustion.

††† Energy conservation standards for electric instantaneous water heaters are included in EPCA. (42 U.S.C. 6313(a)(5)(D)-(E)) The compliance date for these energy conservation standards is January 1, 1994. In this NOPR, DOE proposes to codify these standards for electric instantaneous water heaters in its regulations at 10 CFR 431.110. Further discussion of standards for electric instantaneous water heaters is included in section III.C.5.

2. History of Standards Rulemaking for CWH Equipment

The Energy Policy Act of 1992 (EPACT), Public Law 102–486, amended EPCA to prescribe mandatory energy conservation standards for CWH equipment, including storage water heaters, instantaneous water heaters, and unfired hot water storage tanks. (42 U.S.C. 6313(a)(5)) These statutory energy conservation standards corresponded to the efficiency levels in ASHRAE Standard 90.1–1989.

As noted in section II.A of this document, on October 29, 1999, ASHRAE released Standard 90.1–1999, which included new efficiency levels for numerous categories of CWH equipment. DOE evaluated these new standards and subsequently amended energy conservation standards for CWH equipment in a final rule published in the **Federal Register** on January 12, 2001. 66 FR 3336. DOE adopted the levels in ASHRAE Standard 90.1–1999 for all types of CWH equipment, except for electric storage water heaters. For electric storage water heaters, the standard in ASHRAE Standard 90.1–1999 was less stringent than the standard prescribed in EPCA and, consequently, would have increased energy consumption.

Under those circumstances, DOE could not adopt the new efficiency level for electric storage water heaters in ASHRAE Standard 90.1–1999. *Id.* at 3350. In the January 2001 final rule, DOE also adopted the efficiency levels contained in the Addendum to ASHRAE Standard 90.1–1989 for hot water supply boilers, which were identical to the efficiency levels for instantaneous water heaters. *Id.* at 3356.

As noted above, ASHRAE increased the thermal efficiency level for commercial oil-fired storage water heaters greater than 105,000 Btu/h and less than 4,000 Btu/h/gal in Standard 90.1–2013, thereby triggering DOE's statutory obligation to promulgate an amended uniform national standard at those levels, unless DOE determines that there is clear and convincing evidence supporting the adoption of more-stringent energy conservation standards than the ASHRAE levels. As a first step in this process, DOE published an energy savings analysis as a Notice of Data Availability (NODA) in the **Federal Register** on April 11, 2014. 79 FR 20114. In this NODA, DOE tentatively decided that energy savings were not significant enough to justify further analysis of increasing standards for commercial oil-fired storage water heaters beyond the standard levels in ASHRAE 90.1–2013. DOE published a notice of proposed rulemaking in the **Federal Register** on January 8, 2015, which took a consistent position vis-à-vis commercial oil-fired storage water heaters. 80 FR 1172. Subsequently, in the July 2015 ASHRAE equipment final rule, among other things, DOE adopted the standard for commercial oil-fired storage water heaters at the level set forth in ASHRAE 90.1–2013. 80 FR 42614 (July 17, 2015). This adopted standard is shown in Table II.2.

TABLE II.2—FEDERAL ENERGY CONSERVATION STANDARDS FOR THERMAL EFFICIENCY FOR COMMERCIAL OIL-FIRED STORAGE WATER HEATERS

Regulatory requirement	Input capacity/stored volume btu/(gal × h)	Thermal efficiency (%)	Compliance date
Previous Federal Standard	<4,000	78	10/29/2003.

TABLE II.2—FEDERAL ENERGY CONSERVATION STANDARDS FOR THERMAL EFFICIENCY FOR COMMERCIAL OIL-FIRED STORAGE WATER HEATERS—Continued

Regulatory requirement	Input capacity/stored volume btu/(gal × h)	Thermal efficiency (%)	Compliance date
Amended Federal Standard (ASHRAE 90.1–2013 Level)	<4,000	80	10/09/2015.

In addition to requiring rulemaking when triggered by ASHRAE action, EPCA also requires DOE to conduct an evaluation of its standards for CWH equipment every 6 years, and to publish either a notice of determination that such standards do not need to be amended or a notice of proposed rulemaking, including proposed amended standards. (42 U.S.C. 6313(a)(6)(C)(i)) Pursuant to this statutory requirement, DOE initiated this rulemaking to evaluate the energy conservation standards for covered CWH equipment and to determine whether new or amended standards are warranted. As an initial step for reviewing energy conservation standards for CWH equipment, DOE published a request for information for CWH equipment on October 21, 2014 ("October 2014 RFI"). 79 FR 62899. The October 2014 request for information (RFI) solicited information from the public to help DOE determine whether more-stringent energy conservation standards for CWH equipment would result in a significant amount of additional energy savings, and whether those standards would be technologically feasible and economically justified. *Id.* at 62899–900.

DOE received a number of comments from interested parties in response to the October 2014 RFI. These commenters are identified in Table II.3. DOE considered these comments in the preparation of this NOPR. In this document, DOE addresses the relevant public comments it received in the appropriate sections.

TABLE II.3—INTERESTED PARTIES PROVIDING WRITTEN COMMENTS ON THE CWH RFI

Name	Abbreviation	Commenter type*
A.O. Smith Corporation	A.O. Smith	M
Bradford White Corporation	Bradford White	M
American Gas Association	AGA	IR
Air-Conditioning, Heating and Refrigeration Institute	AHRI	IR
Steffes Corporation	Steffes	M
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Natural Resources Defense Council.	Joint Advocates (including ASAP, ACEEE, and NRDC).	EA
Edison Electric Institute	EEI	IR
University of Michigan Plant Operations	UM	OS
Rheem Corporation	Rheem	M
National Rural Electric Cooperative Association	NRECA	IR

* "IR": Industry Representative; "M": Manufacturer; "EA": Efficiency/Environmental Advocate; "OS": Other Stakeholder.

III. General Discussion

A. Compliance Dates

In 42 U.S.C. 6313(a), EPCA prescribes a number of compliance dates for any resulting amended standards for CWH equipment. These compliance dates vary depending on specific statutory authority under which DOE is conducting its review (*i.e.,* whether DOE is triggered by a revision to ASHRAE Standard 90.1 or whether DOE is undertaking a "6-year look back" review), and the action taken (*i.e.,* whether DOE is adopting ASHRAE Standard 90.1 levels or more-stringent levels). The discussion that follows explains the potential compliance dates as they pertain to this rulemaking.

As noted previously, EPCA requires that at least once every 6 years, DOE must review standards for covered equipment and publish either a notice of determination that standards do not need to be amended or a NOPR proposing new standards. (42 U.S.C 6313(a)(6)(C)(i)) For any NOPR published pursuant to 42 U.S.C. 6313(a)(6)(C), the final rule would apply on the date that is the later of: (1) The date 3 years after publication of the final rule establishing a new standard or (2) the date 6 years after the effective date of the current standard for a covered product. (42 U.S.C. 6313(a)(6)(C)(iv)) For the CWH equipment for which DOE is proposing amended standards, the date 3 years after the publication of the final rule would be later than the date 6 years after the effective date of the current standard. As a result, compliance with any amended energy conservation standards, if adopted by a final rule in this rulemaking, would be required beginning on the date 3 years after the publication of the final rule.

B. Test Procedures

DOE's existing test procedure for CWH equipment is specified at 10 CFR 431.106, and incorporates by reference American National Standards Institute (ANSI) Standard Z21.10.3–2011 (ANSI Z21.10.3–2011), "Gas Water Heaters, Volume III, Storage Water Heaters With Input Ratings Above 75,000 Btu Per Hour, Circulating and Instantaneous." The test procedure provides mandatory methods for determining the thermal efficiency and standby loss of certain classes of CWH equipment. In 10 CFR 431.104, DOE provides two sources for guidance on how to determine R-value of unfired hot water storage tanks.

On October 21, 2004, DOE published a direct final rule in the **Federal Register** that adopted amended test procedures for CWH equipment. 69 FR 61974. These test procedure amendments incorporated by reference certain sections of ANSI Z21.10.3–1998, "Gas Water Heaters, Volume III, Storage Water Heaters with Input Ratings above 75,000 Btu per Hour, Circulating and Instantaneous." *Id.* at 61983. On May 16, 2012, DOE published a final rule for certain commercial heating, air-conditioning, and water heating equipment in the **Federal Register** that, among other things, updated the test procedures for certain CWH equipment by incorporating by reference ANSI Z21.10.3–2011. 77 FR 28928. These updates did not materially alter DOE's test procedure for CWH equipment.

AEMTCA amended EPCA to require that DOE publish a final rule establishing a uniform efficiency descriptor and accompanying test methods for covered residential water heaters and certain CWH equipment. (42 U.S.C. 6295(e)(5)(B)) The final rule must replace the current energy factor (for residential water heaters) and thermal efficiency and standby loss (for commercial water heaters) metrics with a uniform efficiency descriptor. (42 U.S.C. 6295(e)(5)(C)) AEMTCA allowed DOE to provide an exclusion from the uniform efficiency descriptor for specific categories of covered water heaters that do not have residential uses, that can be clearly described, and that are effectively rated using the current thermal efficiency and standby loss descriptors. (42 U.S.C. 6295(e)(5)(F))

EPCA further requires that, along with developing a uniform descriptor, DOE must also develop a mathematical conversion factor to translate the results based upon use of the efficiency metric under the test procedure in effect on December 18, 2012, to the new energy descriptor. (42 U.S.C. 6295(e)(5)(E)(i)) In addition, pursuant to 42 U.S.C. 6295(e)(5)(E)(ii) and (iii), the conversion factor must not affect the minimum efficiency requirements for covered water heaters, including residential-duty commercial water heaters. Furthermore, such conversions must not lead to a change in measured energy efficiency for covered residential and residential-duty commercial water heaters manufactured and tested prior to the final rule establishing the uniform efficiency descriptor. *Id.* In the July 2014 final rule, DOE interpreted these statutory requirements in 42 U.S.C. 6295(e)(5)(E) to mean that DOE must translate existing standards and ratings from the current metrics to the new metric, while maintaining the stringency of the current standards. 79 FR 40542, 40558 (July 11, 2014).

In the July 2014 final rule, DOE, among other things, established the uniform energy factor (UEF), a revised version of the current residential energy factor metric, as the uniform efficiency descriptor required by AEMTCA. 79 FR 40542, 40578–40579 (July 11, 2014). The uniform efficiency descriptor established in the July 2014 final rule only applies to commercial water heaters that meet the definition of "residential-duty commercial water heater," which is defined as any gas-fired, electric, or oil-fired storage water heater or instantaneous commercial water heater that meets the following conditions:

(1) For models requiring electricity, uses single-phase external power supply;

(2) Is not designed to provide outlet hot water at temperatures greater than 180 °F; and

(3) Is not excluded by any of the specified limitations regarding rated input and storage volume shown in Table III.1, which reflects the table in 10 CFR 431.102.

Id. at 40586.

TABLE III.1—RATED INPUT AND STORAGE VOLUME RANGES FOR NON-RESIDENTIAL-DUTY COMMERCIAL WATER HEATERS

Water heater type	Indicator of non-residential application
Gas-fired Storage	Rated input >105 kBtu/h; Rated storage volume >120 gallons.
Oil-fired Storage	Rated input >140 kBtu/h; Rated storage volume >120 gallons.
Electric Storage.	Rated input >12 kW; Rated storage volume >120 gallons.
Heat Pump with Storage.	Rated input >12 kW; Rated current >24 A at a rated voltage of not greater than 250 V; Rated storage volume >120 gallons.
Gas-fired Instantaneous	Rated input >200 kBtu/h; Rated storage volume >2 gallons.
Electric Instantaneous	Rated input >58.6 kW; Rated storage volume >2 gallons.
Oil-fired Instantaneous	Rated input >210 kBtu/h; Rated storage volume >2 gallons.

CWH equipment not meeting the definition of "residential-duty commercial water heater" was deemed to be sufficiently characterized by the current thermal efficiency and standby loss metrics.

In April, 2016, DOE issued a NOPR proposing to amend the test procedures for certain other CWH equipment ("2016 CWH TP NOPR"). (See Docket No. EERE–2014–BT–TP–0008). In the 2016 CWH TP NOPR, DOE proposed several changes, including: (1) Updating references of industry test standards to incorporate by reference the most recent versions of the industry standards (including updating references from ANSI Z21.10.3–2011 to ANSI Standard Z21.10.3–2015 (ANSI Z21.10.3–2015), "Gas Water Heaters, Volume III, Storage Water Heaters With Input Ratings Above 75,000 Btu Per Hour, Circulating and Instantaneous"; (2) modifying the thermal efficiency and standby loss tests for certain classes of CWH equipment to improve repeatability; (3) developing a test method for determining the efficiency of unfired hot water storage tanks in terms of a standby loss metric; (4) changing the method for setting the thermostat for storage water heaters and storage-type instantaneous water heaters; (5) clarifying the thermal efficiency and standby loss test procedures with regard to stored energy loss and manipulation of settings during efficiency testing; (6) defining "storage-type instantaneous water heaters" and modifying several definitions for consumer water heaters and commercial water heating equipment included at 10 CFR 430.2 and 10 CFR 431.102, respectively; (7) developing a test procedure for measurement of standby loss for flow-activated instantaneous water heaters; (8) establishing temperature-sensing requirements for thermal efficiency and standby loss testing of instantaneous water heaters and hot water supply boilers; (9) modifying the standby loss test procedure for instantaneous water heaters and hot water supply boilers; (10) developing a test procedure for commercial heat pump water heaters; (11) establishing a procedure for determining the fuel input rate of gas-fired and oil-fired CWH equipment and clarifying DOE's enforcement provisions regarding fuel input rate; (12) modifying several definitions included in DOE's regulations for CWH equipment at 10 CFR 431.102; (13) establishing default values for certain testing parameters to be used if these parameters are not specified in product literature or supplemental test instructions; and (14) modifying DOE's certification requirements for CWH equipment. (See EERE–2014–BT–TP–0008) Discussion of DOE's treatment of unfired hot water storage tanks and commercial heat pump water heaters with respect to energy conservation standards can be found in sections III.C.4 and III.C.6, respectively.

For four classes of residential-duty commercial water heaters—electric storage water heaters, heat pump water heaters, gas-fired instantaneous water heaters, and oil-fired instantaneous water heaters—the input criteria established to separate residential-duty commercial water heaters and commercial water heaters are identical to those codified at 10 CFR 430.2 that separate consumer water heaters and commercial water heaters. Because these input criteria are identical, by definition, no models can be classified under these four residential-duty equipment classes. Therefore, to eliminate potential confusion, DOE proposed in the 2016 CWH TP NOPR to remove these classes from the definition for "residential-duty commercial water heater" codified at 10 CFR 431.102. (See EERE–2014–BT–TP–0008) For electric instantaneous water heaters, the rated maximum input criterion for residential-duty commercial water heaters is 58.6 kW, higher than 12 kW, which is the maximum input rate for residential electric instantaneous water heaters as defined in EPCA. (42 U.S.C. 6291(27)(B)) Therefore, there are models on the market that qualify as residential-duty commercial electric instantaneous water heaters. DOE's treatment of electric instantaneous water heaters in this rule is discussed in section III.C.5 of this document.

C. Scope of Rulemaking

In response to the 2014 RFI, DOE received several comments on the scope of this rulemaking. These comments cover specific equipment classes, as well as the improvement of overall water heating systems.

1. Commercial Water Heating Systems

The University of Michigan recommended that DOE fund research to develop best concepts for design, installation, and operation standards and codes. (UM, No. 9 at p. 3)[20] Additionally, Joint Advocates recommended that DOE consider that many CWH equipment systems are designed very inefficiently, citing unnecessary recirculation loops. (Joint Advocates, No. 7 at p. 2) Furthermore, the University of Michigan recommended that DOE approach the American Society of Mechanical Engineers (ASME) and ASHRAE to determine whether the scope of their existing standards can be expanded. (UM, No. 9 at p. 2)

In response, DOE notes that its Office of Energy Efficiency and Renewable Energy (EERE) already supports research and development in multiple areas of water-heating energy efficiency technology, including building codes and roadmaps for emerging water heating technologies.[21] In the context of this rulemaking, however, DOE must follow congressionally-mandated requirements and processes for setting standards and test procedures for CWH equipment, and DOE may not delegate its standard-setting responsibilities under the statute to ASME, ASHRAE, or any other organization. These processes are codified in the United States Code, Title 42, Chapter 77, Subchapter III, Part A—Energy Conservation Program for Consumer Products Other Than Automobiles and Part A–1—Certain Industrial Equipment. DOE notes that ASHRAE does set minimum efficiency levels for CWH equipment in ASHRAE Standard 90.1 and did recently update thermal efficiency levels for certain oil-fired CWH equipment as discussed in section II.B.2, but has not updated levels for other CWH equipment analyzed in this document within the last 6 years. DOE also notes that its energy conservation standards apply at the point of manufacture. DOE must consider energy conservation standards with respect to the CWH equipment as shipped from the manufacturer and using the statutory criteria contained in EPCA. DOE does not have authority to set standards for efficiency of installed CWH building systems.

2. Residential-Duty Commercial Water Heaters

DOE analyzed equipment classes for commercial water heaters and residential-duty commercial water heaters separately in this rulemaking. This rulemaking, therefore, includes CWH equipment classes that are covered by the UEF metric, as well as CWH equipment classes that continue to be covered by the existing thermal efficiency and standby loss metrics. However, DOE has conducted all analyses for selecting proposed standards in this document using the existing thermal efficiency and standby loss metrics, because there was no efficiency data in terms of UEF available when DOE undertook the analyses for this NOPR.

In the April 2015 NOPR, DOE proposed conversion factors to determine UEF for residential and residential-duty commercial water heaters from their current rated energy factor and thermal efficiency and standby loss values. 80 FR 20116, 20142–43 (April 14, 2015). For residential-duty commercial water heaters, conversion factors for determining UEF were proposed for the four draw patterns specified in the July 2014 test procedure final rule: high, medium, low, and very small. *Id.* at 20143. DOE then converted standard levels proposed in this NOPR for residential-duty commercial water heaters based upon the thermal efficiency and standby loss metrics to standards based upon the UEF metric, using the conversion factors proposed in the April 2015 NOPR. This conversion of standards from thermal efficiency and standby loss to UEF is described in further detail in section IV.C.9 of this NOPR.

3. Oil-Fired Commercial Water Heating Equipment

ASHRAE Standard 90.1–2013 raised the thermal efficiency level for commercial oil-fired storage water heaters from 78 percent to 80 percent. In the July 2015 ASHRAE equipment final rule, DOE adopted the ASHRAE Standard 90.1 efficiency level of 80 percent because DOE determined that there was insufficient potential for energy savings to justify further increasing the standard. 80 FR 42614 (July 17, 2015). Therefore, because thermal efficiency standards for commercial oil-fired storage water heater were just recently addressed in a separate rulemaking under the ASHRAE trigger, DOE did not consider further increasing thermal efficiency standards for commercial oil-fired storage water heaters in this rulemaking, as circumstances have not changed appreciably regarding this equipment during the intervening period. Consequently, this equipment class was not included in any of the analyses described in this document. For this NOPR, DOE also considered whether amended standby loss standards for commercial oil-fired water heaters would be warranted. DOE has tentatively concluded that a change in the maximum standby loss level would likely effect less of a change to energy consumption of oil-fired storage water heaters than would a change in the thermal efficiency. Therefore, an amended standby loss standard is unlikely to result in significant additional energy savings. Thus, DOE has not analyzed amended standby loss standards for commercial oil-fired storage water heaters in this rulemaking. Similarly, DOE considered oil-fired instantaneous water heaters and hot water supply boilers, and did not identify any units currently on the market that would meet the DOE definition. Therefore, DOE estimates that there are very few, if any, annual shipments for this equipment class. Therefore, DOE has tentatively concluded that the energy savings possible from amended standards for such equipment is *de minimis,* and thus, did not analyze amended standards for commercial oil-fired instantaneous water heaters for this NOPR.

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[20] A notation in this form provides a reference for information that is in the docket of DOE's rulemaking to develop energy conservation standards for commercial water heating equipment (Docket No. EERE–2014–BT–STD–0042, which is maintained at *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0042*). This particular notation refers to a comment: (1) submitted by UM; (2) appearing in document number 0009; and (3) appearing on page 3 of that document.

[21] For an overview of DOE's energy efficiency related research, see *http://energy.gov/eere/efficiency.*

Issue 1: DOE seeks comment on its tentative conclusions regarding the potential energy savings from analyzing amended standards for standby loss of commercial oil-fired storage water heaters and for thermal efficiency of commercial oil-fired instantaneous water heaters.

4. Unfired Hot Water Storage Tanks

The current Federal energy conservation standard for unfired hot water storage tanks is expressed as an R-value requirement for the tank thermal insulation. In the 2016 CWH TP NOPR, DOE proposed a new test procedure for unfired hot water storage tanks using a new standby loss metric, which would replace the current R-value requirement. (See EERE–2014–BT–TP–0008) In the October 2014 RFI, DOE stated that any amended energy conservation standards for unfired hot water storage tanks would be in terms of the metric to be established in the noted test procedure rulemaking. 79 FR 62899, 62903 (Oct. 21, 2014). Given the lack of testing data for the new metric and test procedure proposed in the 2016 CWH TP NOPR, DOE plans to consider energy conservation standards for unfired hot water storage tanks in a separate rulemaking. Therefore, DOE did not evaluate potential amendments to standards for unfired hot water storage tanks in this NOPR.

5. Electric Instantaneous Water Heaters

EPCA prescribes energy conservation standards for several classes of commercial water heating equipment manufactured on or after January 1, 1994. (42 U.S.C. 6313(a)(5)) DOE codified these standards in its regulations for commercial water heating equipment at 10 CFR 431.110. However, when codifying these standards from EPCA, DOE inadvertently omitted the standards put in place by EPCA for electric instantaneous water heaters. Specifically, for instantaneous water heaters with a storage volume of less than 10 gallons, EPCA prescribes a minimum thermal efficiency of 80 percent. For instantaneous water heaters with a storage volume of 10 gallons or more, EPCA prescribes a minimum thermal efficiency of 77 percent and a maximum standby loss, in percent/hour, of 2.30 + (67/measured volume [in gallons]). (42 U.S.C. 6313(a)(5)(D) and (E)) Although DOE's regulations at 10 CFR 431.110 do not currently include energy conservation standards for electric instantaneous water heaters, these standards prescribed in EPCA are applicable. Therefore, DOE proposes to codify these standards in its regulations at 10 CFR 431.110.

DOE received several comments on the analysis of commercial electric instantaneous water heaters. A.O. Smith stated that commercial electric instantaneous water heaters should be included in the scope of this rulemaking. (A.O. Smith, No. 2 at p. 1) Similarly, Bradford White and AHRI stated that electric instantaneous units should be included in the scope of this rulemaking, in separate equipment classes. (Bradford White, No. 3 at p. 1; AHRI, No. 5 at p. 2)

Rheem stated that electric instantaneous water heaters should not be included in the scope of this rulemaking because of the limited applications of this equipment. (Rheem, No. 10 at p. 1) Joint Advocates recommended that electric instantaneous water heaters not be included in this rulemaking, unless there is evidence of particularly inefficient models on the market. (Joint Advocates, No. 7 at p. 3)

While it is within the Department's authority to propose amended standards for electric instantaneous water heaters, DOE has tentatively concluded that there is little potential for additional energy savings from doing so. The thermal efficiency of electric instantaneous water heaters is already at nearly 100 percent due to the high efficiency of electric resistance heating elements, thus providing little reason to propose an amended standard for this equipment class. Additionally, DOE tentatively concluded that amending the standby loss standard for this class would result in minimal energy savings.

6. Commercial Heat Pump Water Heaters

A.O. Smith also stated that commercial heat pump water heaters, of add-on, integrated, air-source, and water-source categories, should be included in the scope of this rulemaking. (A.O. Smith, No. 2 at p. 1) Similarly, Bradford White, Rheem, and AHRI stated that add-on, integrated, air-source, and water-source heat pump water heaters should be included in this rulemaking. (Bradford White, No. 3 at p. 1; Rheem, No. 10 at p. 1; AHRI, No. 5 at p. 2) Rheem also commented that integrated and add-on heat pump water heaters differ by construction, application, life-cycle cost, and energy consumption, and that both air-source and water-source heat pump water heaters are currently available on the market. AHRI also commented that electric instantaneous water heaters and heat pump water heaters should be considered as separate equipment classes, and that if integrated heat pump water heaters are not included, then units falling outside of the definition for residential heat pump water heaters will go unregulated.

Joint Advocates stated that DOE should develop a test procedure for both integrated and add-on commercial heat pump water heaters. Joint Advocates stated that such a test procedure should have low enough operating temperature conditions to gauge whether units operate in electric resistance heating mode during cold weather, and that a DOE test procedure would help grow the market by allowing for greater use of rebate programs. Joint Advocates also commented that air-source units should be included, but that inclusion of water-source units would be complicated due to varying inlet water conditions for water-source and ground-source applications. (Joint Advocates, No. 7 at p. 3)

While DOE agrees that integrated, add-on, and air-source and water-source commercial heat pump water heaters meet EPCA's definitions for commercial storage and instantaneous water heaters, DOE is not proposing amended standards for any of these classes of commercial heat pump water heaters in this NOPR. DOE has found no evidence of any commercial integrated heat pump water heaters on the market. All commercial heat pump water heaters that DOE identified as currently on the market are "add-on" units, which are designed to be paired with either an electric storage water heater or unfired hot water storage tank in the field.

As discussed in section III.B, a test procedure for commercial heat pump water heaters was proposed in the 2016 CWH TP NOPR. (See EERE–2014–BT–TP–0008) Because the test procedure has not yet been established in a final rule and there is not sufficient test data with the proposed test method for units currently on the market, DOE plans to consider energy conservation standards for commercial heat pump water heaters in a future rulemaking.

7. Electric Storage Water Heaters

DOE did not include electric storage water heaters in the analysis of amended thermal efficiency standards. Electric storage water heaters do not currently have a thermal efficiency requirement under 10 CFR 431.110. Electric storage water heaters typically use electric resistance coils as their heating elements, which are highly efficient. The thermal efficiency of these units already approaches 100 percent. Therefore, there are no options for increasing the rated thermal efficiency of this equipment, and the impact of setting thermal efficiency energy conservation standards for these products would be negligible. However, DOE has considered amended standby loss standards for electric storage water heaters.

8. Instantaneous Water Heaters and Hot Water Supply Boilers

In its analysis of amended standby loss standards, DOE did not include instantaneous water heaters and hot waters supply boilers other than storage-type instantaneous water heaters.[22] Instantaneous water heaters and hot waters supply boilers other than storage-type instantaneous water heaters with greater than 10 gallons of water stored do have a standby loss requirement under 10 CFR 431.110. However, DOE did not analyze more-stringent standby loss standards for these units because it tentatively determined that such amended standards would result in minimal energy savings. DOE identified only 26 models on the market of instantaneous water heaters or hot water supply boilers with greater than 10 gallons of water stored (other than storage-type instantaneous water heaters), and 14 of the identified models have less than 15 gallons of water stored. DOE tentatively concluded that hot water supply boilers with less than 10 gallons would not have significantly different costs and benefits as compared to hot water supply boilers with greater than 10 gallons. Therefore, DOE analyzed both equipment classes of instantaneous water heaters and hot water supply boilers (less than 10 gallons and greater than 10 gallons stored volume) together for thermal efficiency standard levels in this NOPR. DOE also tentatively determined that establishing standby loss standards for instantaneous water heaters and hot water supply boilers with less than or equal to 10 gallons waters stored would result in minimal energy savings.

D. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that is the subject of the rulemaking. As the first step in such an analysis, DOE conducts a market and technology assessment that develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially-available equipment or in working prototypes to be technologically feasible. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii)–(iv). Additionally, DOE notes that the four screening criteria do not directly address the propriety status of design options. DOE only considers efficiency levels achieved through the use of proprietary designs in the engineering analysis if they are not part of a unique path to achieve that efficiency level (*i.e.,* if there are other non-proprietary technologies capable of achieving the same efficiency). Section IV.B of this document discusses the results of the screening analysis for CWH equipment, particularly the designs DOE considered, those it screened out, and those that are the basis for the trial standard levels (TSLs) in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the NOPR technical support document (TSD).

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered equipment, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such equipment. Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible ("max-tech") improvements in energy efficiency for CWH equipment, using the design parameters for the most efficient products available on the market. The max-tech levels that DOE determined for this rulemaking are described in section IV.C.3.b of this proposed rule. Chapter 5 of the NOPR TSD includes more detail on the selected max-tech efficiency levels.

E. Energy Savings

1. Determination of Savings

For each TSL, DOE projected energy savings from the classes of equipment that are the subjects of this rulemaking shipped in the 30-year period that begins in the year of compliance with amended standards (2019–2048 for gas-fired CWH equipment and electric CWH equipment).[23] The savings are measured over the entire lifetime of equipment shipped in the 30-year analysis period.[24] DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between standards and no-new-standards cases. The no-new-standards case represents a projection of energy consumption in the absence of amended mandatory energy conservation standards, and it considers market forces and policies that affect current demand for more-efficient equipment over the analysis period.

DOE used its national impact analysis (NIA) spreadsheet model to estimate national energy savings (NES) from potential amended standards for commercial water heating equipment. The NIA spreadsheet model (described in section IV.H of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by equipment at the locations where they are used. For electric commercial water heaters, DOE calculates NES on an annual basis in terms of primary energy[25] savings, which is the savings in the energy that is used to generate and transmit the site electricity. To calculate primary energy savings from site electricity savings, DOE derived annual conversion factors from the model used to prepare the Energy Information Administration (EIA)'s *AEO 2015*. For natural gas- and oil-fired commercial water heaters, the primary energy savings are considered equal to the site energy savings because they are supplied to the user without transformation from another form of energy.

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[22] DOE proposed a definition for "storage-type instantaneous water heater" in the 2016 CWH TP NOPR. (See EERE–2014–BT–TP–0008) Storage-type instantaneous water heaters are discussed in section IV.A.2.a of this NOPR.

[23] DOE also presents a sensitivity analysis that considers impacts for equipment shipped in a 9-year period.

[24] In the past, DOE presented energy savings results for only the 30-year period that begins in the year of compliance. In the calculation of economic impacts, however, DOE considered operating cost savings measured over the entire lifetime of equipment shipped in the 30-year period. DOE has chosen to modify its presentation of national energy savings to be consistent with the approach used for its national economic analysis.

In addition to primary energy savings, DOE also calculates full-fuel-cycle (FFC) energy savings. As discussed in DOE's statement of policy and notice of policy amendment, the FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*e.g.*, coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy conservation standards. 76 FR 51281 (August 18, 2011), as amended at 77 FR 49701 (August 17, 2012). For FFC energy savings, DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered equipment.[26] For more information, see section IV.H.2 of this document.

Issue 2: The agency assumes no growth in equipment efficiency in absence of new standards; however, DOE requests comment on expected changes over the analysis period in market share by energy efficiency level or average shipment-weighted efficiency for the analyzed CWH equipment classes in the no-new-standards case.

2. Significance of Savings

To amend standards for commercial water heating equipment, DOE must determine with clear and convincing evidence that the standards would result in "significant" additional energy savings. (42 U.S.C. 6313(a)(6)(A)(ii)(II) and (C)(i)) Although the term "significant" is not defined in the Act, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council* v. *Herrington*, 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated that Congress intended "significant" energy savings in this context to be savings that were not "genuinely trivial." The energy savings for all of the TSLs considered in this rulemaking, including the proposed standards (presented in section V.C.1), are nontrivial. Therefore, DOE has tentatively concluded that the energy savings associated with the proposed standards in this NOPR—1.8 quads due to commercial water heating equipment shipped in 2019–2048—are "significant," as required by 42 U.S.C. 6313(a)(6)(A)(ii)(II) and (C)(i).

F. Economic Justification

1. Specific Criteria

EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard for commercial water heating equipment is economically justified. (42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII) and (C)(i)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Commercial Consumers

EPCA requires DOE to consider the economic impact of a standard on manufacturers and the commercial consumers of the products subject to the standard. (42 U.S.C. 6313(a)(6)(B)(I) and (C)(i)) In determining the impacts of a potential amended standard on manufacturers, DOE conducts a manufacturer impact analysis (MIA), as discussed in section IV.J of this NOPR. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step incorporates both a short-term impact assessment (based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation) and a long-term impact assessment (over a 30-year period).[27] The industry-wide impacts analyzed include: (1) Industry net present value (INPV), which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers (manufacturer subgroups), including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for new and amended standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual commercial consumers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For commercial consumers in the aggregate, DOE also calculates the national net present value of the economic impacts applicable to a particular rulemaking. DOE also evaluates the LCC impacts of potential standards on identifiable subgroups of commercial consumers that may be affected disproportionately by a national standard.

b. Savings in Operating Costs Compared To Increase in Price (Life-Cycle Costs)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of commercial water heating equipment compared to any increase in the price of the equipment that is likely to result from the standard. (42 U.S.C. 6313(a)(6)(B)(ii)(II) and (C)(i)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a piece of equipment (including installation cost and sales tax) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the equipment. To account for uncertainty and variability in specific inputs, such as equipment lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value. For its analysis, DOE assumes that commercial consumers will purchase the covered equipment in the first year of compliance with amended standards.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

The LCC savings are calculated relative to a no-new-standards case that reflects projected market trends in the absence of amended standards. DOE identifies the percentage of commercial consumers estimated to receive LCC savings or experience an LCC increase, in addition to the average LCC savings associated with a particular standard level. DOE's LCC analysis is discussed in further detail in section IV.F of this NOPR.

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[25] Primary energy consumption refers to the direct use at source, or supply to users without transformation, of crude energy; that is, energy that has not been subjected to any conversion or transformation process.

[26] Natural gas and electricity were the energy types analyzed in the FFC calculations.

[27] DOE also presents a sensitivity analysis that considers impacts for equipment shipped in a 9-year period, which is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6313(a)(6)(B)(ii)(III) and (C)(i)) As discussed in section IV.H and chapter 10 of the NOPR TSD, DOE uses the NIA spreadsheet to project NES.

d. Lessening of Utility or Performance of Products

In establishing classes of products, and in evaluating design options and the impact of potential standard levels, DOE must consider any lessening of the utility or performance of the considered products likely to result from the standard. (42 U.S.C. 6313(a)(6)(B)(ii)(IV) and (C)(i)) Based on data available to DOE, the standards proposed in this document would not reduce the utility or performance of the CWH equipment under consideration in this rulemaking. Section IV.B of this document and Chapter 4 of the NOPR TSD provide detailed discussion on the potential impact of amended standards on equipment utility and performance.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider any lessening of competition that is likely to result from energy conservation standards. It also directs the Attorney General of the United States (Attorney General) to determine the impact, if any, of lessening of competition likely to result from a proposed standard and to transmit such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6313(a)(6)(B)(ii)(V) and (C)(i)) To assist the Attorney General in making such determination, DOE will transmit a copy of this proposed rule and the TSD to the Attorney General for review with a request that the Department of Justice (DOJ) provide its determination on this issue. DOE will publish and address the Attorney General's determination in the final rule. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

f. Need for National Energy Conservation

In considering new or amended energy conservation standards, EPCA also directs DOE to consider the need for national energy conservation. (42 U.S.C. 6313(a)(6)(B)(ii)(VII) and (C)(i)) DOE expects that the energy savings from the proposed standards are likely to provide improvements to the security and reliability of the nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the nation's needed power generation capacity, as discussed in section IV.M.

The proposed standards also are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production. DOE reports the emissions impacts from the proposed standards of this rulemaking, and from each TSL it considered, in sections IV.K and V.B.6 of this NOPR. DOE also reports estimates of the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L of this NOPR.

g. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6313(a)(6)(B)(ii)(VII) and (C)(i)) DOE did not consider other factors for this document.

2. Rebuttable Presumption

EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the payback period for commercial consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test.

In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to commercial consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6313(a)(6)(B)(ii) and (C)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section V.B.1.c of this proposed rule.

G. Public Participation

UM commented that because of the number of issues on which DOE seeks comment, only stakeholders who have staff dedicated to regulatory processes would be able to comment on all issues involved in this rulemaking. (UM, No. 9 at p. 1) UM stated that a large rulemaking like this one favors trade associations over end users who have limited means to respond. UM recommended that DOE break up the rulemaking into smaller, more manageable pieces, thereby allowing more stakeholders to provide comments. (UM, No. 9 at p. 2)

DOE notes that pursuant to EPCA requirements, DOE provides an equal opportunity for the public to provide comment in response to rulemaking notices published in the **Federal Register** or during DOE rulemaking public meetings. DOE solicits data and information throughout the rulemaking process to validate and improve its analyses. Although DOE welcomes comments on any aspect of a rulemaking notice, to better facilitate public comments, DOE clearly lists the issues on which it is particularly interested in receiving comments and views of interested parties, as shown in section VII.E of this document. All stakeholders may comment on any or all of the issues so that their relevant views are considered in DOE's analysis. Furthermore, to offer enough time for the public to respond, DOE typically provides 60 days for the public to provide comment after publication of a NOPR for energy conservation standards. Therefore, DOE believes it provides the interested public an equal opportunity and adequate time to respond to a rulemaking without being overly burdensome for commenters.

In addition, DOE disagrees with UM's assertion that its rulemaking public participation process disproportionally benefits certain groups over end users. All stakeholders' views, data, and other relevant information are taken into account in developing and implementing final regulations. DOE is also statutorily mandated to evaluate the impact on commercial consumers that could be potentially affected by increased standards. As detailed in sections III.F.1, IV.F, and V.B.1 of this document, DOE thoroughly evaluates the impact on commercial consumers in determining whether a proposed standard is economically justified. Therefore, DOE believes comments from end users of covered equipment are equally and appropriately considered in this rulemaking.

In response to UM's comments regarding breaking the rulemaking into smaller pieces, DOE clarifies that its rulemaking notices already separate the analysis into analytical subsections as shown in sections III, IV, and V of this document. In each analytical subsection, DOE presents the applicable analytical tools, resources, and data used for the analysis. DOE also clarifies the issues pertaining to the analysis on which it seeks public comment in each subsection. Therefore, DOE views the current structure of its rulemaking notices as sufficient to allow the public to consider and provide comment on specific sections of its rulemaking. As with all rulemakings, DOE encourages stakeholder review and feedback on the analyses described in this NOPR and in the NOPR TSD.

H. Revisions to Notes in Regulatory Text

DOE proposes to modify the three notes to the table of energy conservation standards in 10 CFR 431.110. First, DOE proposes to modify the note to the table of energy conservation standards denoted by subscript "a" to maintain consistency with DOE's procedure and enforcement provisions for determining fuel input rate of gas-fired and oil-fired CWH equipment that were proposed in the 2016 CWH TP NOPR. Among these changes, DOE proposed that the fuel input rate be used to determine equipment classes and calculate the standby loss standard. (See EERE–2014–BT–TP–0008) Therefore, in this NOPR, DOE proposes to replace the term "nameplate input rate" with the term "fuel input rate."

Additionally, DOE proposes to remove the note to the table of energy conservation standards denoted by subscript "b." This note clarifies the compliance dates for energy conservation standards for units manufactured after 2005 and between 2003 and 2005. DOE has determined that this note is no longer needed because both of these compliance dates are over 10 years before the compliance date of standards proposed in this NOPR.

DOE also proposes to modify the note to the table of energy conservation standards denoted by subscript "c," which establishes design requirements for water heaters and hot water supply boilers having more than 140 gallons of storage capacity that do not meet the standby loss standard. DOE proposes to replace the phrase "fire damper" with the phrase "flue damper," because DOE believes that "flue damper" was the intended meaning, and that "fire damper" was a typographical error. DOE believes the intent of this design requirement was to require that any water heaters or hot water supply boilers greater than 140 gallons that do not meet the standby loss standard must have some device that physically restricts heat loss through the flue, either a flue damper or blower that sits atop the flue.

Issue 3: DOE seeks comment on its proposed revisions to notes to the table of energy conservation standards in 10 CFR 431.110.

I. Certification, Compliance, and Enforcement Issues

1. Rated and Measured Storage Volume

In this NOPR, DOE proposes to make two changes to its certification, compliance, and enforcement regulations at 10 CFR Part 429. First, DOE proposes to add requirements to 10 CFR 429.44 that the rated value of storage tank volume must equal the mean of the measured storage volume of the units in the sample. There are currently no requirements from the Department limiting the amount of difference that is allowable between the tested (*i.e.,* measured) storage volume and the "rated" storage volume that is specified by the manufacturer for CWH equipment other than residential-duty commercial water heaters. In the July 2014 final rule, DOE established a requirement for residential water heaters and residential-duty commercial water heaters that requires the rated volume to be equal to the mean of the measured volumes in a sample. 79 FR 40542, 40565 (July 11, 2014).

From examination of reported data in the AHRI Directory, DOE observed that many units are rated at storage volumes above the measured storage volume. DOE's maximum standby loss equations for gas-fired and oil-fired CWH equipment are based on the rated storage volume, and the maximum standby loss increases as rated storage volume increases. DOE believes commercial consumers often look to storage volume as a key factor in choosing a storage water heater. Consequently, DOE proposes to adopt rating requirements that the rated storage volume must be equal to the mean of the values measured using DOE's test procedure. In the 2016 CWH TP NOPR, DOE proposed a test procedure for measuring the storage volume of CWH equipment that is similar to the method contained in section 5.27 of ANSI Z21.10.3–2015. (See EERE–2014–BT–TP–0008) In addition, DOE proposes to specify that for DOE-initiated testing, the mean of the measured storage volumes must be within five percent of the rated volume in order to use the rated storage volume in calculation of maximum standby loss. If the mean of the measured storage volumes is more than five percent different than the rated storage volume, then DOE proposes to use the mean of the measured values in calculation of maximum standby loss. DOE notes that similar changes were made to DOE's certification, compliance, and enforcement regulations for residential and residential-duty water heaters in the July 2014 final rule. 79 FR 40542, 40565 (July 11, 2014).

Issue 4: DOE requests comment on its proposed changes to its certification, compliance, and enforcement regulations requiring the rated volume to be equal to the mean of the measured volumes in a sample.

2. Maximum Standby Loss Equations

As discussed in section III.I.1, DOE proposes to add requirements to 10 CFR 429.44 that the rated value of storage tank volume must equal the mean of the measured storage volumes of the units in the sample. In addition, DOE proposes to specify that for DOE-initiated testing, a tested value within 5 percent of the rated value would be a valid test result, such that the rated storage volume would then be used in downstream calculations. If the test result of the volume is invalid (*i.e.,* the measured value is more than 5 percent different than the rated value), then DOE proposed to use the measured value in determining the applicable minimum energy conservation standard and calculations within the test procedure. Specifically, the storage volume is used to calculate standby loss for CWH equipment.

To be consistent with the proposed changes to its certification, compliance, and enforcement regulations, DOE has tentatively concluded that the maximum standby loss equations for CWH equipment should be set in terms of rated volume. The current standby loss standards for water heaters differ in the storage volume metric used in calculation of the standby loss standard (rated storage volume is used for certain classes, while measured storage volume is used for others). Specifically, the maximum standby loss equation for gas-fired and oil-fired water heaters depends on the rated storage volume of the water heater. However, the maximum standby loss equations for electric water heaters depends on the measured storage volume of the water heater. DOE notes there is often a difference between the measured and rated volumes of water heaters, as reported in data in the AHRI Directory. Therefore, DOE proposes to modify the maximum standby loss equations for electric water heaters to depend on rated volume. Specifically, DOE proposes to modify the maximum standby loss equation for electric storage water heaters as shown in the following equation.

$$S = 0.3 + \frac{27}{V_r}$$

Additionally, DOE proposes to modify the maximum standby loss equation for electric instantaneous water heaters with storage capacity greater than or equal to ten gallons as shown in the following equation. Further discussion of energy conservation standards for electric instantaneous water heaters is included in section III.C.5.

$$S = 2.30 + \frac{67}{V_r}$$

Issue 5: DOE requests comment on its proposed modification of the maximum standby loss equations for electric storage and instantaneous water heaters to depend on rated volume instead of measured volume.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to CWH equipment. A separate subsection addresses each component of the analyses.

In overview, DOE used several analytical tools to estimate the impact of the standards proposed in this document. The first tool is a spreadsheet that calculates the LCC and PBP of potential amended or new energy conservation standards. The national impacts analysis (NIA) uses a second spreadsheet set that provides shipments forecasts and calculates national energy savings and net present value resulting from potential new or amended energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (GRIM), to assess manufacturer impacts of potential new or amended standards. These three spreadsheet tools are available on the DOE Web site for this rulemaking: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=36.*

Additionally, DOE estimated the impacts on electricity demand and air emissions from utilities due to the amended energy conservation standards for CWH equipment. DOE used a version of EIA's National Energy Modeling System (NEMS) for the electricity and air emissions analyses. The NEMS model simulates the energy sector of the U.S. economy. EIA uses NEMS[28] to prepare its *AEO,* a widely known baseline energy forecast for the United States. The version of NEMS used for appliance standards analysis, which makes minor modifications to the *AEO* version, is called NEMS–BT.[29] NEMS–BT accounts for the interactions among the various energy supply and demand sectors and the economy as a whole.

A. Market and Technology Assessment

For the market and technology assessment for CWH equipment, DOE gathered information that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, manufacturers, market characteristics, and technologies used in the equipment. This activity included both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment for this rulemaking include: (1) A determination of equipment classes; (2) manufacturers and industry structure; (3) types and quantities of CWH equipment sold; (4) existing efficiency programs; and (5) technologies that could improve the energy efficiency of CWH equipment. The key findings of DOE's market assessment are summarized below. Chapter 3 of the NOPR TSD provides further discussion of the market and technology assessment.

1. Definitions

EPCA includes the following categories of CWH equipment as covered industrial equipment: storage water heaters, instantaneous water heaters, and unfired hot water storage tanks. EPCA defines a "storage water heater" as a water heater that heats and stores water internally at a thermostatically controlled temperature for use on demand. This term does not include units that heat with an input rating of 4,000 Btu per hour or more per gallon of stored water. EPCA defines an "instantaneous water heater" as a water heater that heats with an input rating of at least 4,000 Btu per hour per gallon of stored water. Lastly, EPCA defines an "unfired hot water storage tank" as a tank that is used to store water that is heated external to the tank. (42 U.S.C. 6311(12)(A)–(C))

DOE codified the following more specific definitions for CWH equipment in 10 CFR 431.102 in a final rule published in the **Federal Register** on October 21, 2004 ("October 2004 final rule"). 69 FR 61974, 61983.[30]

Specifically, DOE defined "hot water supply boiler" as a packaged boiler that is industrial equipment and that: (1) Has an input rating from 300,000 Btu/h to 12,500,000 Btu/h and of at least 4,000 Btu/h per gallon of stored water, (2) is suitable for heating potable water, and (3) has the temperature and pressure controls necessary for heating potable water for purposes other than space heating, and/or the manufacturer's product literature, product markings, product marketing, or product installation and operation instructions indicate that the boiler's intended uses include heating potable water for purposes other than space heating.[31]

DOE also defined an "instantaneous water heater" as a water heater that has an input rating not less than 4,000 Btu/h per gallon of stored water, and that is industrial equipment, including products meeting this description that are designed to heat water to temperatures of 180 °F or higher.[32]

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[28] For more information on NEMS, refer to *The National Energy Modeling System: An Overview.* U.S. Energy Information Administration (EIA) (2009) DOE/EIA–0581(2009) (Available at: *www.eia.gov/oiaf/aeo/overview).*

[29] EIA approves the use of the name "NEMS" to describe only an *AEO* version of the model without any modification to code or data. Because the present analysis entails some minor code modifications and runs the model under various policy scenarios that deviate from *AEO* assumptions, the name "NEMS–BT" refers to the model as used here. (BT stands for DOE's Building Technologies Office.)

[30] In the 2016 CWH TP NOPR, DOE proposed to amend its definitions for commercial water heating equipment by changing the phrase "input rating" to "fuel input rate" for gas-fired and oil-fired equipment, in order to match DOE's proposed regulations regarding fuel input rate. (See EERE–2014–BT–TP–0008)

[31] In the 2016 CWH TP NOPR, DOE proposed to amend its definition for "hot water supply boiler" by citing the definition for "packaged boiler" included in § 431.82 instead of a duplicated definition for "packaged boiler" in § 431.102, which DOE proposed to remove. (See EERE–2014–BT–TP–0008)

[32] In the 2016 CWH TP NOPR, DOE proposed to amend its definition for "instantaneous water heater" by making the following changes: (1) Removing the clause stating that products designed to heat water to temperatures of 180 °F or higher are included; (2) removing the clause "that is industrial equipment"; and (3) adding the input criteria that

Continued

DOE defined a "storage water heater" as a water heater that heats and stores water within the appliance at a thermostatically controlled temperature for delivery on demand and that is industrial equipment, and does not include units with an input rating of 4,000 Btu/h or more per gallon of stored water.[33]

Lastly, DOE defined an "unfired hot water storage tank" as a tank used to store water that is heated externally, and that is industrial equipment. *Id.*

2. Equipment Classes

When evaluating and establishing energy conservation standards, DOE generally divides covered equipment into equipment classes by the type of energy used or by capacity or other performance-related features that justify a different standard. In determining whether a performance-related feature justifies a different standard, DOE considers such factors as the utility to the commercial consumers of the feature and other factors DOE determines are appropriate.

DOE currently divides CWH equipment classes based on the energy source, equipment category (*i.e.*, storage vs. instantaneous and hot water supply boilers), and size (*i.e.*, input capacity rating and rated storage volume). Unfired hot water storage tanks are also included as a separate equipment class. Table IV.1 shows DOE's current CWH equipment classes and energy conservation standards.

TABLE IV.1—CURRENT CWH EQUIPMENT CLASSES AND ENERGY CONSERVATION STANDARDS

Equipment class	Size	Energy conservation standards *	
		Minimum thermal efficiency (equipment manufactured on and after October 9, 2015)** †	Maximum standby loss (equipment manufactured on and after October 29, 2003)** ††
Electric storage water heaters	All	N/A	$0.30 + 27/V_m$ (%/h)
Gas-fired storage water heaters	≤155,000 Btu/h	80%	$Q/800 + 110(V_r)^{1/2}$ (Btu/h)
	>155,000 Btu/h	80%	$Q/800 + 110(V_r)^{1/2}$ (Btu/h)
Oil-fired storage water heaters	≤155,000 Btu/h	80%†	$Q/800 + 110(V_r)^{1/2}$ (Btu/h)
	>155,000 Btu/h	80%†	$Q/800 + 110(V_r)^{1/2}$ (Btu/h)
Electric instantaneous water heaters†††.	<10 gal	80%	N/A
	≥10 gal	77%	$2.30 + 67/V_m$ (%/h)
Gas-fired instantaneous water heaters and hot water supply boilers.	<10 gal	80%	N/A
	≥10 gal	80%	$Q/800 + 110(V_r)^{1/2}$ (Btu/h)
Oil-fired instantaneous water heater and hot water supply boilers.	<10 gal	80%	N/A
	≥10 gal	78%	$Q/800 + 110(V_r)^{1/2}$ (Btu/h)
		Minimum thermal insulation	
Unfired hot water storage tank	All	R–12.5	

* V_m is the measured storage volume, and V_r is the rated volume, both in gallons. Q is the nameplate input rate in Btu/h.

** For hot water supply boilers with a capacity of less than 10 gallons: (1) the standards are mandatory for products manufactured on an after October 21, 2005 and (2) products manufactured prior to that date, and on or after October 23, 2003, must meet either the standards listed in this table or the applicable standards in Subpart E of this Part for a "commercial packaged boiler."

† For oil-fired storage water heaters: (1) The standards are mandatory for equipment manufactured on and after October 9, 2015 and (2) equipment manufactured prior to that date must meet a minimum thermal efficiency level of 78 percent.

†† Water heaters and hot water supply boilers having more than 140 gallons of storage capacity need not meet the standby loss requirement if: (1) The tank surface area is thermally insulated to R–12.5 or more, (2) a standing pilot light is not used, and (3) for gas or oil-fired storage water heaters, they have a fire damper or fan assisted combustion.

††† Energy conservation standards for electric instantaneous water heaters are included in EPCA. (42 U.S.C. 6313(a)(5)(D)–(E)) The compliance date for these energy conservation standards is January 1, 1994. In this NOPR, DOE proposes to codify these standards for electric instantaneous water heaters in its regulations at 10 CFR 431.110. Further discussion of standards for electric instantaneous water heaters is included in section III.C.5.

Table IV.2 presents the proposed equipment classes for CWH equipment. The following text provides additional details, discussion of comments relating to the equipment classes, proposed definitions, as well as issues on which DOE is seeking comments.

TABLE IV.2 PROPOSED CWH EQUIPMENT CLASSES

Equipment class	Specifications*
Electric storage water heaters	All
Gas-fired storage water heaters:	
Commercial	Rated input >105 kBtu/h or rated storage volume >120 gal
Residential-Duty**	Rated input ≤105 kBtu/h and rated storage volume ≤120 gal
Oil-fired storage water heaters:	
Commercial	Rated input >140 kBtu/h or rated storage volume >120 gal
Residential-Duty**	Rated input ≤140 kBtu/h and rated storage volume ≤120 gal
Electric instantaneous water heaters †, ††	<10 gal
	≥10 gal

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separate consumer and commercial instantaneous water heaters for each energy source (*i.e.*, gas, oil, and electricity). (See EERE–2014–BT–TP–0008)

[33] In the 2016 CWH TP NOPR, DOE proposed to amend its definition for "storage water heater" by adding the input criteria that separate consumer and commercial storage water heaters for each energy source (*i.e.*, gas, oil, and electricity). (See EERE–2014–BT–TP–0008)

TABLE IV.2 PROPOSED CWH EQUIPMENT CLASSES—Continued

Equipment class	Specifications*
Gas-fired instantaneous water heaters and hot water supply boilers ††	
Instantaneous water heaters (other than storage-type) and hot water supply boilers.	<10 gal ≥10 gal
Storage-type instantaneous water heaters †††	≥10 gal
Oil-fired instantaneous water heaters and hot water supply boilers ††	<10 gal ≥10 gal
Unfired hot water storage tanks	All

* These specifications only distinguish between classes of CWH equipment. The different classifications of consumer water heaters and commercial water heating equipment are specified by the definitions codified at 10 CFR 430.2 and 10 CFR 431.102, respectively.

** In addition to the listed specifications, to be classified as a residential-duty commercial water heater, a commercial water heater must, if requiring electricity, use single-phase external power supply, and not be designed to heat water at temperatures greater than 180 °F. 79 FR 40542, 40586 (July 11, 2014).

† Energy conservation standards for electric instantaneous water heaters are included in EPCA. (42 U.S.C. 6313(a)(5)(D)(E)) In this NOPR, DOE proposes to codify these equipment classes and corresponding energy conservation standards for electric instantaneous water heaters in its regulations at 10 CFR 431.110. Further discussion of standards for electric instantaneous water heaters is included in section III.C.5.

†† To be considered an instantaneous water heater or hot water supply boiler, CWH equipment must heat greater than 4,000 Btu per gallon of water stored.

††† DOE proposes a new equipment class for storage-type instantaneous water heaters, which are similar to storage water heaters, but with a ratio of input capacity to storage volume greater than or equal to 4,000 Btu/h per gallon of water stored. DOE proposed a definition for "storage-type instantaneous water heater" in the 2016 CWH TP NOPR. (See EERE–2014–BT–TP–0008)

In the October 2014 RFI, DOE sought comment on several issues regarding the equipment class structure for CWH equipment. 79 FR 62899, 62904–09 (Oct. 21, 2014). In response, A.O. Smith, Bradford White, and AHRI all recommended that the equipment class structure be simplified by establishing the following equipment classes: (1) Commercial gas-fired water heaters and hot water supply boilers <10 gallons; (2) commercial-fired gas water heaters and hot water supply boilers ≥10 gallons; (3) commercial oil-fired water heaters and hot water supply boilers <10 gallons; and (4) commercial oil-fired water heaters and hot water supply boilers ≥10 gallons. (A.O. Smith, No. 2 at p. 1; Bradford White, No. 3 at p. 1; AHRI, No. 5 at p. 1)

DOE disagrees that the equipment class structure should be simplified in the manner the commenters suggested because commercial instantaneous water heaters and hot water supply boilers with a storage volume greater than 10 gallons would include units with significant variation in design and utility. Specifically, this equipment class currently contains both hot water supply boilers and storage-type water heaters with greater than 4,000 Btu/h per gallon of water stored, which DOE believes may require separate equipment classes for reasons detailed in the discussion immediately below. Therefore, DOE has tentatively concluded that instantaneous water heaters with a storage volume greater than 10 gallons and storage water heaters should remain in separate equipment classes.

a. Storage-Type Instantaneous Water Heaters

In the 2016 CWH TP NOPR, DOE noted that the "gas-fired instantaneous water heaters and hot water supply boilers" equipment class with a storage volume greater than or equal to 10 gallons encompasses both instantaneous water heaters and hot water supply boilers with large volume heat exchangers, as well as instantaneous water heaters with storage tanks (but with at least 4,000 Btu/h of input per gallon of water stored). (See EERE–2014–BT–TP–0008) Therefore, DOE proposed to separate these units into classes—storage-type instantaneous water heaters with greater than 4,000 Btu/h per gallon of stored water, and instantaneous water heaters (other than storage-type) and hot water supply boilers with greater than 10 gallons of stored water, with the following definition for "storage-type instantaneous water heater":

Storage-type instantaneous water heater means an instantaneous water heater comprising a storage tank with a submerged heat exchanger(s) or heating element(s).

It is DOE's understanding that gas-fired storage-type instantaneous water heaters are very similar to gas-fired storage water heaters, but with a higher ratio of input rating to tank volume. This higher input-volume ratio is achieved with a relatively larger heat exchanger paired with a relatively smaller tank. Increasing either the input capacity or storage volume increases the recovery capacity of the water heater. However, through a review of product literature, DOE noted no significant design differences that would warrant different energy conservation standard levels (for either thermal efficiency or standby loss) between models in these two proposed equipment classes. Therefore, DOE grouped the two equipment classes together in its analyses for this rulemaking. As a result, DOE proposes the same standard levels for commercial gas-fired storage water heaters and commercial gas-fired storage-type instantaneous water heaters.

Issue 6: DOE requests comment on whether there are significant differences between storage water heaters and storage-type instantaneous water heaters that would justify analyzing these classes separately for amended energy conservations standards.

b. Tankless Water Heaters and Hot Water Supply Boilers

DOE notes that there are also significant differences in design and application between equipment within the "gas-fired instantaneous water heaters and hot water supply boilers" equipment class with storage volume less than 10 gallons. Specifically, DOE has identified two kinds of equipment within this class: Tankless water heaters and hot water supply boilers. From examination of equipment literature and discussion with manufacturers, DOE understands that tankless water heaters are typically used without a storage tank, flow-activated, wall-mounted, and capable of higher temperature rises. Hot water supply boilers, conversely, are typically used with a storage tank and recirculation loop, thermostatically-activated, and not wall-mounted. However, despite these differences, tankless water heaters and hot water supply boilers share basic similarities: both kinds of equipment supply hot water in commercial applications with at least 4,000 Btu/h per gallon of stored water, and both include heat exchangers through which incoming water flows and is heated by combustion flue gases that flow around the heat exchanger tubes. Because of these basic similarities, DOE continued to group these types of equipment into a single equipment class and analyzed tankless water heaters and hot water supply boilers as two separate kinds of representative equipment for the instantaneous water heaters and hot water supply boilers equipment class for this NOPR.

Issue 7: DOE requests comment on whether tankless water heaters and hot water supply boilers should be treated as separate equipment classes in DOE's energy conservation standards for CWH equipment and whether proposing the same standards incentivizes any switching in shipments from one equipment class to the other. Additionally, DOE requests feedback on what criteria should be used to distinguish between tankless water heaters and hot water supply boilers if separate equipment classes are established.

DOE only considered gas-fired instantaneous water heaters and hot water supply boilers with an input capacity greater than 200,000 Btu/h in its analysis, because EPCA includes gas-fired instantaneous water heaters with an input capacity less than or equal to 200,000 Btu/h in its definition of consumer "water heater." (42 U.S.C. 6291(27)(b))

c. Gas-Fired and Oil-Fired Storage Water Heaters

A.O. Smith, Bradford White, Rheem, and AHRI commented that the current separation of commercial gas and oil storage water heaters into classes with input capacity less than or equal to 155,000 Btu/h and greater than 155,000 Btu/h is not needed, arguing that such distinction should be eliminated. (A.O. Smith, No. 2 at p. 1; Bradford White, No. 3 at p. 1; Rheem, No. 10 at p. 1; AHRI, No. 5 at p. 2)

DOE agrees with the commenters, and proposes to consolidate commercial gas-fired and oil-fired storage equipment classes that are currently divided by input rates of 155,000 Btu/h. DOE is now proposing the following two equipment classes without an input rate distinction: (1) Gas-fired storage water heaters and (2) oil-fired storage water heaters. The input rate of 155,000 Btu/h was first used as a dividing criterion for storage water heaters in the EPACT 1992 amendments to EPCA, which mirrored the standard levels and equipment classes in ASHRAE Standard 90.1–1989. (42 U.S.C. 6313(a)(5)(B)–(C)) ASHRAE has since updated its efficiency levels for oil-fired and gas-fired storage water heaters in ASHRAE Standard 90.1–1999 by consolidating equipment classes that were divided by input rate of 155,000 Btu/h. Pursuant to requirements in EPCA, DOE adopted the increased standards in ASHRAE Standard 90.1–1999, but did not correspondingly consolidate the equipment classes above and below 155,000 Btu/h. As a result, DOE's current standards are identical for the equipment classes that are divided by input rate of 155,000 Btu/h. Therefore, DOE tentatively concluded that eliminating the dividing criterion for commercial gas-fired and oil-fired storage water heaters at 155,000 Btu/h would simplify the equipment class structure and make the structure more consistent with that in ASHRAE Standard 90.1.

d. Grid-Enabled Water Heaters

A. O. Smith, Rheem, and AHRI suggested that DOE should adopt a separate equipment class for grid-enabled electric storage water heaters. (A.O. Smith, No. 2 at p. 1; Rheem, No. 10 at p. 1; AHRI, No. 5 at p. 1) NRECA stated that DOE should not adopt any standards that effectively eliminate water heating technologies used for demand response and thermal storage. (NRECA, No. 11 at p. 2) Steffes recommended establishing a sub-class for grid-interactive electric storage units, due to their different operating schedules and economic considerations. (Steffes, No. 6 at p. 2)

DOE tentatively concludes that a separate equipment class for grid-enabled commercial electric storage water heaters is not warranted. First, as discussed in section III.B, there are no units in the residential-duty electric storage equipment class, as the dividing criteria for residential and commercial electric storage units match those for residential-duty and commercial electric storage units. Therefore, electric storage water heaters can only be classified as residential or commercial, and an equipment class of grid-enabled residential-duty water heaters would comprise no units. Second, for commercial electric storage water heaters, DOE only prescribes a standby loss standard. DOE does not believe an increased standby loss standard level would be likely to affect grid-enabled technology because the more-stringent standby loss level analyzed for electric storage water heaters is most commonly met by increasing insulation thickness, which would not differentially affect grid-enabled technology. Therefore, DOE is not proposing a separate equipment class for grid-enabled commercial electric storage water heaters in this rulemaking.

e. Condensing Gas-Fired Water Heating Equipment

AGA suggested that DOE should analyze commercial gas condensing and non-condensing water heaters as separate equipment classes. (AGA, No. 4 at p. 2) AGA stated that replacement of non-condensing gas water heaters with condensing gas water heaters can be problematic due to the separate venting needed and condensate disposal issues. AGA opined that the ability of non-condensing gas water heaters to be common-vented with other gas appliances into chimneys is a performance feature that justifies analyzing non-condensing and condensing gas water heaters separately. AGA also cited precedent for such a separation in analysis in the residential clothes dryer energy conservation standards rulemaking.

Regarding the separation of vented and vent-less clothes dryers into two product classes in the residential clothes dryer rulemaking as cited by AGA, DOE has found the circumstances in that rulemaking to be distinguishable from the present rulemaking. More specifically, in a direct final rule for energy conservation standards for residential clothes dryers and room air conditioners published on April 21, 2011 ("April 2011 final rule"), DOE established separate product classes for vented and vent-less clothes dryers because of the unique utility they offer consumers (*i.e.,* the ability to be installed in space-constrained locations, such as high-rise apartments and recreational vehicles, where venting dryers would be precluded entirely due to venting restrictions). 76 FR 22454, 22485. In the April 2011 final rule, ventless dryers provided that subset of consumers the utility of being able to dry their clothes at all, so it is not simply a matter of additional installation cost, as confronts us in this rulemaking for CWH equipment. *Id.* Consequently, DOE believes that such a distinction would not apply to commercial gas-fired water heaters, because all gas-fired water heaters require venting and all installations could accommodate a condensing gas water heater.

DOE reiterates that disparate equipment may have very different consumer utilities, thereby making direct comparisons difficult and potentially misleading. For instance, in the April 2011 final rule, DOE established separate product classes for vented and ventless clothes dryers because of their unique utility to consumers, as previously discussed. But in a final rule for energy conservation standards for residential water heaters, pool heaters, and direct heating equipment published on April 16, 2010, DOE determined that water heaters that utilize heat pump technology did not need to be put in a separate product class from conventional types of hot water heaters that utilize electric resistance technology, even though water heaters utilizing heat pumps require the additional installation of a condensate drain that a hot water heater utilizing electric resistance technology does not require. 75 FR 20112, 20134–20135. DOE found that regardless of these installation factors, the heat pump water heater and the conventional water heater still had the same utility to the consumer: Providing hot water. *Id.* In both cases, DOE made its finding based on consumer type and utility type, rather than product design criteria that impact product efficiency or installation costs. These distinctions in both the consumer type and the utility type are important because, as DOE has previously pointed out, taken to the extreme, each different design could be designated a different "product class" and, therefore, require different energy conservation standards.

Tying the concept of "feature" to a specific technology would effectively lock-in the currently existing technology as the ceiling for product efficiency and eliminate DOE's ability to address technological advances that could yield significant consumer benefits in the form of lower energy costs while providing the same functionality for the consumer. DOE is very concerned that determining features solely on product technology could undermine the Department's Appliance Standards Program. If DOE is required to maintain separate product classes to preserve less-efficient technologies, future advancements in the energy efficiency of covered products would become largely voluntary, an outcome which seems inimical to Congress's purposes and goals in enacting EPCA.

DOE tentatively concludes that both non-condensing and condensing commercial gas-fired CWH equipment provide the same hot water for use by commercial consumers. Furthermore, DOE has tentatively concluded that condensing gas-fired water heaters could replace non-condensing gas-fired water heaters in all commercial settings, although in certain instances this may lead to significant installation costs. DOE recognizes the potential increased installation costs that a proposed condensing standard might impose on some subset of consumers, and has factored such installation costs in its LCC analysis. However, the possibility that installing a non-condensing commercial water heater may be less costly than a condensing commercial water heater because of the difference in venting methods does not justify separating the two kinds of equipment. Condensing technology is discussed in more detail in the screening analysis at section IV.B, and installation costs for all equipment classes are discussed in more detail in section IV.F.2.b of this NOPR and in chapter 8 of the NOPR TSD.

Issue 8: DOE seeks comment on its proposed equipment class structure, and whether any equipment classes are unnecessary or additional equipment classes are needed.

3. Review of the Current Market for CWH Equipment

In order to gather information needed for the market assessment for CWH equipment, DOE consulted a variety of sources, including manufacturer literature, manufacturer Web sites, the AHRI Directory of Certified Product Performance,[34] the California Energy Commission (CEC) Appliance Efficiency Database,[35] and DOE's Compliance Certification Database.[36] DOE used these sources to compile a database of CWH equipment that served as resource material throughout the analyses conducted for this rulemaking. This database contained the following counts of unique models: 269 commercial gas-fired storage water heaters, 67 residential-duty commercial gas-fired storage water heaters, 71 electric storage water heaters, 59 commercial gas-fired storage-type instantaneous water heaters (storage water heaters with greater than 4,000 Btu/h per gallon of stored water), 25 gas-fired tankless water heaters, 239 gas-fired hot water supply boilers, 15 commercial oil-fired storage water heaters, 5 residential-duty commercial oil-fired storage water heaters, and 4 commercial oil-fired storage-type instantaneous water heaters. No oil-fired instantaneous water heaters or hot water supply boilers were found on the market. As the database was compiled mostly from certification databases, efficiency data—standby loss and thermal efficiency for storage water heaters, thermal efficiency for instantaneous water heaters and hot water supply boilers—were available for all models considered. Chapter 3 of the NOPR TSD provides more information on the CWH equipment currently available on the market, including a full breakdown of these units into their equipment classes and graphs showing performance data.

4. Technology Options

As part of the market and technology assessment, DOE uses information about commercially-available technology options and prototype designs to help identify technologies the manufacturers could use to improve energy efficiency for CWH equipment. This effort produces an initial list of all the technologies that DOE believes are technologically feasible. This assessment provides the technical background and structure on which DOE bases its screening and engineering analyses. Chapter 3 of the NOPR TSD includes descriptions of all technology options identified for this equipment.

In the October 2014 RFI, DOE listed twelve technology options and requested comment regarding their applicability to the current market and their impact on energy efficiency of CWH equipment. 79 FR 62899, 62904 (Oct. 21, 2014). The technology options identified in the October 2014 RFI were as follows:

- Heat traps
- Improved insulation (including increasing jacket insulation, insulating tank bottom, or using a plastic tank (electric only), advanced insulation types, foam insulation, and pipe and fitting insulation)
- Power and direct venting
- Fully condensing technology (including storage, instantaneous, and hybrid, as well as pulse combustion)
- Improved flue design (including high-efficiency flue baffles, multiple flues, submerged combustion chamber, and optimized flue geometry)
- Sidearm heating and two-phase thermosiphon technology
- Electronic ignition systems
- Improved heat pump water heaters
- Thermovoltaic and thermoelectric generators
- Improved controls (including timer controls, modulating controls, and intelligent and wireless controls and communication)
- Self-cleaning

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[34] Based on listings in the AHRI Directory last accessed in September, 2014. (Available at: *https://www.ahridirectory.org/ahridirectory/pages/home.aspx*). Standby loss data for electric storage water heaters were updated on March 17, 2015. Details of the data comprising the database used for analysis are described in Chapter 3 of the NOPR TSD.

[35] Available at *http://www.appliances.energy.ca.gov/AdvancedSearch.aspx*.

[36] Available at *https://www.regulations.doe.gov/certification-data/*

- Improved burners (including variable firing-rate burners, low-stage firing burners, and modulating burners)

Id.

DOE also solicited information on potential additional energy-efficiency-improving technology options that DOE should consider for the purposes of this rulemaking in the October 2014 RFI. 79 FR 62899, 62904 (Oct. 21, 2014). Several parties commented on the list of technologies. A.O. Smith, Bradford White, Rheem, and AHRI all commented that self-cleaning should not be included in the list because it is a feature that improves maintenance of storage water heaters, not efficiency. (A.O. Smith, No. 2 at p. 2; Bradford White, No. 3 at p. 2; Rheem, No. 10 at p. 1; AHRI, No. 5 at p. 2) Bradford White, Rheem, and AHRI also commented that heat traps should not be included because heat traps are installed in external piping for commercial water heater installations. (Bradford White, No. 3 at p. 2; Rheem, No. 10 at p. 1; AHRI, No. 5 at p. 2) AHRI added that ASHRAE Standard 90.1 requires inclusion of heat traps for CWH equipment when installed, not when manufactured. (AHRI, No. 5 at p. 2) A. O. Smith also stated that fully condensing technology should not be considered for oil-fired units, as it is not feasible to develop given the size of the market. (A.O. Smith, No. 2 at p. 2)

DOE agrees with the commenters that self-cleaning technology would not affect the thermal efficiency or standby loss of a storage water heater. DOE also agrees that heat traps are most commonly installed in piping, not in CWH equipment. Section 7.4.6 of ASHRAE Standard 90.1–2013 requires heat traps be installed either integral to the water heater or storage tank, or in both the inlet and outlet piping as close as possible to the storage tank, if not part of a recirculating system.[37] DOE was not able to find evidence of a significant number of models of CWH equipment on the market with installed heat traps. Therefore, for the reasons above, DOE has removed these two technologies from the list of potential technology options considered. Regarding condensing technology for oil-fired water heaters, DOE did not analyze oil-fired water heaters in this rulemaking, as discussed previously in section III.C of this document. However, condensing technology was analyzed as a technology option for gas-fired CWH equipment.

Steffes recommended that grid-interactive technology for electric storage water heaters be added to the list of technologies, as they achieve significant system efficiency improvements and carbon reductions. (Steffes, No. 6 at p. 2) Because the efficiency examined in this rulemaking is that of CWH equipment at the point of manufacture as measured by the DOE test procedure, and not of the entire energy grid, DOE has tentatively concluded that grid-interactive technology would not improve the efficiency of CWH equipment as measured by its test procedure.

Because thermal efficiency, standby loss, and UEF are the relevant performance metrics in this rulemaking, DOE did not consider technologies that have no effect on these metrics. However, DOE does not discourage manufacturers from using these other technologies because they might reduce annual energy consumption. The following list includes the technologies that DOE did not consider because they do not affect efficiency as measured by the DOE test procedure. Chapter 3 of the NOPR TSD provides details and reasoning of exclusion for each technology option not considered further, as listed here.

- Plastic tank
- Direct vent
- Timer controls
- Intelligent and wireless controls
- Modulating combustion (for storage water heaters; including modulating controls and variable firing-rate burners, low-stage firing burners, and modulating burners)[38]
- Self-cleaning

DOE also did not consider technologies as options for increasing efficiency if they are included in baseline equipment, as determined from an assessment of units on the market. DOE's research suggests that electromechanical flue dampers and electronic ignition are technologies included in baseline equipment for commercial gas-fired storage water heaters; therefore, they were not included as technology options for that equipment class. However, electromechanical flue dampers and electronic ignition were not identified on baseline units for residential-duty gas-fired storage water heaters, and these options were, therefore, considered for increasing efficiency of residential-duty gas-fired storage water heaters. DOE also considered insulation of fittings around pipes and ports in the tank to be included in baseline equipment; therefore, such insulation was not considered as a technology option for the analysis. While insulation of pipes does reduce heat losses, DOE does not consider CWH equipment to include external piping; therefore, piping insulation was not considered as a technology option for CWH equipment.

After considering the comments above, DOE below lists all of the technology options considered for improving the energy efficiency of CWH equipment as part of this NOPR. This list includes those options identified in the October 2014 RFI (discussed previously), with the exception of those subsequently determined not to improve energy efficiency. In addition, DOE has identified electromechanical flue dampers as a technology option that can increase the efficiency of water heaters. DOE also included three separate technology options often used in condensing CWH equipment: (1) Mechanical draft; (2) condensing heat exchangers, and (3) premix burners. DOE did not consider CO_2 heat pump water heaters for analysis because, as explained in section III.C, commercial electric heat pump water heaters were not analyzed for this NOPR. The technology options selected are discussed in further detail in Chapter 3 of the NOPR TSD. In summary, DOE has identified and considered in this NOPR the following potential technologies for improving the energy efficiency of CWH equipment:

- Improved insulation (including increasing jacket insulation, insulating tank bottom, advanced insulation types, and foam insulation)
- Mechanical draft (including induced draft, also known as power vent, and forced draft)
- Condensing heat exchanger (for all gas-fired equipment classes, and including optimized flue geometry)
- Condensing pulse combustion
- Improved heat exchanger design (including increased surface area and increased baffling)
- Sidearm heating and two-phase thermosiphon technology
- Electronic ignition systems
- Improved heat pump water heaters (including gas absorption heat pump water heaters)
- Thermovoltaic and thermoelectric generators
- Premix burner (including submerged combustion chamber for gas-fired storage water heaters and storage-type instantaneous water heaters)
- Electromechanical flue damper.

B. Screening Analysis

DOE uses the following four screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

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[37] ASHRAE, Standard 90.1–2013 (Available at *www.ashrae.org*).

[38] DOE considers modulating combustion to be a baseline design feature for gas-fired tankless water heaters.

1. *Technological feasibility.* DOE will consider technologies incorporated in commercial products or in working prototypes to be technologically feasible. Technologies that are not incorporated in commercial equipment or in working prototypes are not considered in this NOPR.

2. *Practicability to manufacture, install, and service.* If mass production and reliable installation and servicing of a technology in commercial products could be achieved on the scale necessary to serve the relevant market at the time of the compliance date of the standard, then DOE will consider that technology practicable to manufacture, install, and service.

3. *Adverse impacts on product utility or product availability.* If DOE determines a technology would have a significant adverse impact on the utility of the product to significant subgroups of consumers, or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not consider this technology further.

4. *Adverse impacts on health or safety.* If DOE determines that a technology will have significant adverse impacts on health or safety, it will not consider this technology further.

10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b).

These four screening criteria do not include the proprietary status of design options. As noted previously in section III.D.1, DOE only considers efficiency levels achieved through the use of proprietary designs in the engineering analysis if they are not part of a unique path to achieve that efficiency level. DOE's research has not shown any of the technologies identified in the technology assessment to be proprietary, and thus, DOE did not eliminate any technologies for that reason.

Issue 9: DOE seeks comment on its tentative conclusion that none of the identified technology options are proprietary, and if any technologies are proprietary, requests additional information regarding proprietary designs and patented technologies.

1. Screened-Out Technologies

Technologies that pass through the screening analysis are subsequently examined in the engineering analysis for consideration in DOE's downstream cost-benefit analysis. Based upon a review under the above factors, DOE screened out the design options listed in Table IV.3 for the reasons provided. Chapter 4 of the NOPR TSD contains additional details on the screening analysis, including a discussion of why each technology option was screened out.

TABLE IV.3—SUMMARY OF SCREENED-OUT TECHNOLOGY OPTIONS

Excluded technology option	Applicable equipment classes *	Reasons for exclusion			
		Technological feasibility	Practicability to manufacture, install, and service	Adverse impacts on product utility	Adverse impacts on health or safety
Advanced insulation types	All storage water heaters	X	X	....	....
Condensing pulse combustion	All gas-fired equipment classes	X	X	....	....
Sidearm heating	All gas-fired storage	X	X	....	....
Two-phase thermosiphon technology.	All gas-fired storage	....	X	....	....
Gas absorption heat pump water heaters.	Gas-fired instantaneous water heaters.	....	X	....	....
Thermovoltaic and thermoelectric generators.	All gas-fired equipment classes	X	X	....	....

* All mentions of storage water heaters in this column refer to both storage water heaters and storage-type instantaneous water heaters.

2. Remaining Technologies

After screening out or otherwise removing from consideration certain technologies, the remaining technologies are passed through for consideration in the engineering analysis. Table IV.4 presents identified technologies for consideration in the engineering analysis. Chapter 3 of the NOPR TSD contains additional details on the technology assessment and the technologies analyzed.

TABLE IV.4—TECHNOLOGY OPTIONS CONSIDERED FOR ENGINEERING ANALYSIS

Equipment class	Improved insulation (thickness, tank bottom, foam)	Mechanical draft	Condensing heat exchanger	Increased heat exchanger area, baffling	Electronic ignition	Premix burner	Electro-mechanical flue damper
Electric storage water heaters	X	....	....	....	....	....	....
Commercial gas-fired storage water heaters and storage-type instantaneous water heaters	X	X	X	X	....	X	....
Residential-duty gas-fired storage water heaters	X	X	X	X	X	X	X

TABLE IV.4—TECHNOLOGY OPTIONS CONSIDERED FOR ENGINEERING ANALYSIS—Continued

Equipment class	Improved insulation (thickness, tank bottom, foam)	Mechanical draft	Condensing heat exchanger	Increased heat exchanger area, baffling	Electronic ignition	Premix burner	Electro-mechanical flue damper
Gas-fired instantaneous water heaters and hot water supply boilers	....	X	X	X	....	X	....

C. Engineering Analysis

The engineering analysis establishes the relationship between an increase in energy efficiency of the equipment and the increase in manufacturer selling price (MSP) associated with that efficiency level. This relationship serves as the basis for the cost-benefit calculations for commercial consumers, manufacturers, and the Nation. In determining the cost-efficiency relationship, DOE estimates the increase in manufacturer cost associated with increasing the efficiency of equipment above the baseline up to the maximum technologically feasible ("max-tech") efficiency level for each equipment class.

1. Methodology

DOE typically structures its engineering analysis using one of three approaches: (1) Design-option; (2) efficiency-level; or (3) reverse engineering (or cost-assessment). A design-option approach identifies individual technology options (from the market and technology assessment) that can be used alone or in combination with other technology options to increase the energy efficiency of a baseline unit of equipment. Under this approach, cost estimates of the baseline equipment and more-efficient equipment that incorporates design options are modeled based on manufacturer or component supplier data or engineering computer simulation models. Individual design options, or combinations of design options, are added to the baseline model in descending order of cost-effectiveness. An efficiency-level approach establishes the relationship between manufacturer cost and increased efficiency at predetermined efficiency levels above the baseline. Under this approach, DOE typically assesses increases in manufacturer cost for incremental increases in efficiency, rather than the technology or design options that would be used to achieve such increases. The efficiency level approach uses estimates of cost and efficiency at distinct levels of efficiency from publicly-available information, and information gathered in manufacturer interviews that is supplemented and verified through technology reviews. A reverse-engineering, or cost-assessment, approach involves disassembling representative units of CWH equipment, and estimating the manufacturing costs based on a "bottom-up" manufacturing cost assessment; such assessments use detailed data to estimate the costs for parts and materials, labor, shipping/packaging, and investment for models that operate at particular efficiency levels. The reverse-engineering approach involves testing products for efficiency and determining costs from a detailed bill of materials (BOM) derived from reverse engineering representative equipment.

DOE conducted this engineering analysis for CWH equipment using a combination of the efficiency-level and cost-assessment approaches. For the analysis of thermal efficiency levels for commercial and residential-duty storage and instantaneous water heaters, DOE identified the efficiency levels for the analysis based on market data and then used the cost-assessment approach to determine the manufacturing costs at those levels. For the analysis of standby loss levels for storage water heaters, DOE identified efficiency levels for analysis based on market data and commonly used technology options (*i.e.,* insulation type, thickness), and then used the cost-assessment approach to determine the manufacturing costs of models at those levels.

DOE received several comments from interested parties on the approach to the engineering analysis. A.O. Smith, Bradford White, Rheem, and AHRI all agreed with the use of the reverse-engineering approach, but stated that appropriate cost estimates for components, materials, and labor should be used. (A.O. Smith, No. 2 at p. 2; Bradford White, No. 3 at p. 2; Rheem, No. 10 at p. 2; AHRI, No. 5 at p. 3) DOE notes that it solicited input from manufacturers during manufacturer interviews on the above cost estimates, other relevant engineering assumptions, and other issues regarding this rulemaking. The manufacturer interview process is described in more detail in section IV.J.3 and chapter 12 of the NOPR TSD.

2. Representative Equipment for Analysis

For the engineering analysis, DOE reviewed all CWH equipment classes analyzed in this rulemaking. Because the storage volume and input capacity can affect the energy efficiency of CWH equipment, DOE examined each equipment class separately. Within each equipment class, DOE analyzed the distribution of models available on the market and held discussions with manufacturers to determine appropriate representative equipment for each equipment class.

For storage water heaters, the volume of the tank is a significant factor for costs and efficiency. Water heaters with larger volumes have higher materials, labor, and shipping costs. A larger tank volume is likely to lead to a larger tank surface area, thereby increasing the standby loss of the tank (assuming other factors are held constant, *e.g.,* same insulation thickness and materials). The current standby loss standards for storage water heaters are, in part, a function of volume to account for this variation with tank size. The incremental cost of increasing insulation thickness varies as the tank volume increases, and there may be additional installation concerns for increasing the insulation thickness on larger tanks. Installation concerns are discussed in more detail in section IV.F.2.b. DOE examined specific storage volumes for gas-fired and electric storage water heaters (referred to as representative storage volumes). Because DOE lacked specific information on shipments, DOE examined the number of models at each storage volume listed in the AHRI Directory to determine the representative storage volume, and also solicited feedback from manufacturers during manufacturer interviews as to which storage volumes corresponded to the most shipments. Table IV.5 shows the representative storage volumes that DOE determined best characterize each equipment class.

The current standby loss standards for commercial storage water heaters differ in the storage volume metric used in calculation of the standby loss standard (rated storage volume is used for certain classes, while measured storage volume is used for others). Specifically, the standby loss standard for gas-fired and oil-fired storage water heaters depends on the rated storage volume of the water heater. However, the standby loss standard for electric storage water heaters depends on the measured storage volume of the water heater. DOE notes there is often a difference between the measured and rated volumes of water heaters, as reported in data in the AHRI Directory. Therefore, to calculate standby loss levels for a representative electric storage water heater, a representative measured storage volume is needed. In section III.I of this NOPR, DOE proposes to require that the rated storage volume equal the measured storage volume. Therefore, DOE selected a representative measured storage volume for electric storage water heaters based upon data for measured volumes for units at the selected representative rated storage volume in the AHRI Directory. Table IV.5 shows both selected representative storage volumes for electric storage water heaters.

For all CWH equipment classes, the input capacity is also a significant factor for cost and efficiency. Fossil-fuel-fired water heaters with higher input capacities have higher materials costs, and may also have higher labor and shipping costs. Fossil-fuel-fired storage water heaters with higher input capacities may have additional heat exchanger length to transfer more heat. This leads to higher material costs, and may require the tank to expand to compensate for the displaced volume. Tankless water heaters and hot water supply boilers require larger heat exchangers to transfer more heat with a higher input capacity. Electric storage water heaters with higher input capacities have higher-wattage resistance heating elements, which can increase the cost of purchased parts for the water heater manufacturer. DOE examined input capacities for units in all CWH equipment classes to determine representative input capacities. Because DOE did not receive any shipments data for specific input capacities, DOE considered the number of models at each input capacity in the database of models it compiled (based on the AHRI Directory, CEC Appliance Database, and manufacturer literature) as well as feedback from manufacturer interviews. DOE used this information to select representative input capacities for each equipment class, which are shown in Table IV.5.

TABLE IV.5—REPRESENTATIVE STORAGE VOLUMES AND INPUT CAPACITIES

Equipment class	Specifications	Representative storage volume (gal) *	Representative input capacity (kBtu/h or kW)
Electric storage water heaters	N/A	119 (rated), 114 (measured).	18 kW.
Commercial gas-fired storage water heaters and gas-fired storage-type instantaneous water heaters.	>105 kBtu/h or >120 gal	100	199 kBtu/h.
Residential-duty gas-fired storage water heaters **	≤105 kBtu/h and ≤120 gal	75	76 kBtu/h.
Gas-fired instantaneous water heaters and hot water supply boilers:			
Tankless water heaters	<10 gal		250 kBtu/h.
Hot water supply boilers	All †		399 kBtu/h

* For all equipment classes where not specified, the representative volume is a rated storage volume, not a measured storage volume.

** To be classified as a residential-duty water heater, a commercial water heater must, if requiring electricity, use single-phase external power supply, and not be designed to heat water at temperatures greater than 180 °F. 79 FR 40542, 40586 (July 11, 2014).

† For the engineering analysis, hot water supply boilers <10 gallons and ≥10 gallons were analyzed in the same equipment class. Amended standby loss standards for hot water supply boilers ≥10 gallons were not analyzed in this NOPR, as discussed in section III.C.8. Therefore, no representative storage volume was chosen for instantaneous water heaters or hot water supply boilers.

Issue 10: DOE seeks comment on the representative CWH equipment used in the engineering analysis.

3. Efficiency Levels for Analysis

For each equipment class, DOE analyzed multiple efficiency levels and estimated manufacturer production costs at each efficiency level. The following subsections provide a description of the full efficiency level range that DOE analyzed from the baseline efficiency level to the maximum technologically feasible ("max-tech") efficiency level for each equipment class. DOE conducted a survey of its CWH equipment database and manufacturers' Web sites to determine the highest thermal efficiency levels on the market for each equipment class. DOE identified the most stringent standby loss level for each class by consideration of rated standby loss values of units currently on the market as well as technology options that DOE believes to be feasible but may not currently be included in units on the market in each equipment class. Thermal efficiency levels were analyzed for all CWH equipment considered in this rulemaking except for electric storage water heaters. Standby loss levels were analyzed for all commercial and residential-duty storage water heaters and storage-type instantaneous water heaters.

a. Baseline Efficiency Levels

Baseline equipment is used as a reference point for each equipment class in the engineering analysis and the life-cycle cost and payback-period analyses, which provides a starting point for analyzing potential technologies that provide energy efficiency improvements. Generally, DOE considers "baseline" equipment to refer to a model or models having features and technologies that just meet, but do not exceed, the Federal energy conservation standard and provide basic consumer utility. In establishing the baseline thermal efficiency levels for this analysis, DOE used the current energy conservation standards for CWH equipment to identify baseline units.

The baseline thermal efficiency levels used for analysis for each equipment class are presented in Table IV.6.

TABLE IV.6—BASELINE THERMAL EFFICIENCY LEVELS FOR CWH EQUIPMENT

Equipment class	Thermal efficiency (%)
Electric storage water heaters	
Commercial gas-fired storage water heaters and gas-fired storage-type instantaneous water heaters	80
Residential-duty gas-fired storage water heaters	80
Gas-fired instantaneous water heaters and hot water supply boilers:	
Tankless water heaters	80
Hot water supply boilers	80

DOE used the current energy conservation standards for standby loss to set the baseline standby loss levels. Table IV.7 shows these baseline standby loss levels for representative equipment for each equipment class.

TABLE IV.7—BASELINE STANDBY LOSS LEVELS FOR REPRESENTATIVE CWH EQUIPMENT

Equipment class	Representative storage volume (gal) *	Representative input capacity (kBtu/h or kW)	Baseline standby loss level (Btu/h)
Electric storage water heaters	119 (rated), 114 (measured)	18 kW	353
Commercial gas-fired storage water heaters and gas-fired storage-type instantaneous water heaters.	100	199 kBtu/h	1349
Residential-duty gas-fired storage water heaters	75	76 kBtu/h	1048
Gas-fired instantaneous water heaters and hot water supply boilers:			
Tankless water heaters		250 kBtu/h	
Hot water supply boilers		399 kBtu/h	

* For all equipment classes where not specified, the representative volume is a rated storage volume, not a measured storage volume.

In the October 2014 RFI, DOE sought comment on approaches to consider when establishing baseline efficiency levels for equipment classes transitioning to the UEF metric. 79 FR 62899, 62905 (Oct. 21, 2014). A.O. Smith, Bradford White, Rheem, and AHRI commented that DOE should convert the current thermal efficiency and standby loss standards to UEF to use as the baseline levels. (A.O. Smith, No. 2 at p. 2; Bradford White, No. 3 at p. 2; Rheem, No. 10 at p. 1; AHRI, No. 5 at p. 3) DOE has conducted an analysis for residential-duty water heaters using thermal efficiency and standby loss. Because UEF rating data were not available when this analysis was conducted, DOE is using the mathematical conversion factors proposed in the April 2015 NOPR to translate the results of the analyzed thermal efficiency and standby loss levels to UEF levels. 80 FR 20116, 20143 (April 14, 2015). This conversion of the existing standards to UEF is described in more detail in section IV.C.9. Therefore, the current thermal efficiency and standby loss standards were used as baseline levels.

b. Intermediate and Max-Tech Efficiency Levels

For each equipment class, DOE analyzes several efficiency levels and determines the manufacturing cost at each of these levels. For this NOPR, DOE developed efficiency levels based on a review of available equipment. As noted previously, DOE compiled a database of CWH equipment to determine what types of equipment are currently available to commercial consumers. For each representative equipment type, DOE surveyed various manufacturers' equipment offerings to identify the commonly available efficiency levels. By identifying the most prevalent energy efficiency levels in the range of available equipment and examining models at these levels, DOE can establish a technology path that manufacturers would typically use to increase the thermal efficiency of CWH equipment.

DOE established intermediate thermal efficiency levels for each equipment class. The intermediate thermal efficiency levels are representative of the most common efficiency levels and those that represent significant technological changes in the design of CWH equipment. For commercial gas-fired storage water heaters, DOE chose four thermal efficiency levels between the baseline and max-tech levels for analysis. For residential-duty gas-fired storage water heaters, DOE chose three thermal efficiency levels between the baseline and max-tech levels for analysis. For commercial gas-fired instantaneous water heaters and hot water supply boilers, DOE chose four thermal efficiency levels between the baseline and max-tech levels for analysis. DOE also selected the highest thermal efficiency level identified on the market for each equipment class (*i.e.*, the "max-tech" level). The selected thermal efficiency levels are shown in Table IV.8.

TABLE IV.8—BASELINE, INTERMEDIATE, AND MAX-TECH THERMAL EFFICIENCY LEVELS FOR REPRESENTATIVE CWH EQUIPMENT

Equipment class	Thermal efficiency levels					
	Baseline—E_t EL0 (%)	E_t EL1 (%)	E_t EL2 (%)	E_t EL3 (%)	E_t EL4 * (%)	E_t EL5 ** (%)
Electric storage water heaters	-	-	-	-	-	-
Commercial gas-fired storage water heaters and gas-fired storage-type instantaneous water heaters	80	82	90	92	95	99
Residential-duty gas-fired storage water heaters	80	82	90	95	97	-
Gas-fired instantaneous water heaters and hot water supply boilers:						
Tankless water heaters	80	82	84	92	94	96
Hot water supply boilers	80	82	84	92	94	96

* E_t EL4 is the max-tech efficiency level for residential-duty gas-fired storage water heaters.

** E_t EL5 is the max-tech efficiency level for commercial gas-fired storage water heaters and storage-type instantaneous water heaters, as well as for gas-fired instantaneous water heaters and hot water supply boilers.

In response to the October 2014 RFI, A. O. Smith stated that max-tech efficiency levels should be condensing for gas-fired storage water heaters, heat pump for electric storage water heaters, and "near condensing" for oil-fired storage water heaters. (A. O. Smith, No. 2 at p. 2) Bradford White stated that the max-tech efficiency levels are condensing for gas-fired storage water heaters and heat pump for electric storage water heaters (Bradford White, No. 3 at p. 2) Rheem responded that max-tech efficiency levels within Rheem products are 98 percent thermal efficiency and 325 Btu/h standby loss for electric storage water heaters, 97 percent thermal efficiency and 960 Btu/h for gas-fired storage water heaters, and 94 percent thermal efficiency for gas-fired instantaneous water heaters. (Rheem, No. 10 at p. 3) AHRI commented that max-tech efficiency levels should be determined for each equipment class individually, as condensing would not be an achievable max-tech level for oil-fired storage water heaters. (AHRI, No. 5 at p. 3)

DOE notes that the analyzed max-tech level for commercial gas-fired storage water heaters is condensing as suggested by A. O. Smith and Bradford White. DOE did not consider commercial integrated heat pump water heaters as the max-tech for electric storage water heaters because DOE did not identify any such units on the market. DOE selected higher max-tech thermal efficiency levels than suggested by Rheem, because DOE identified equipment for sale at even higher thermal efficiency levels, which does not appear to make use of any proprietary technology. Given the commercial availability of designs at higher thermal efficiency levels than suggested by Rheem as max-tech, DOE has tentatively concluded that such efficiency levels should be included in the engineering analysis. In response to AHRI, DOE notes that it established max-tech efficiency levels separately for each equipment class, only considering the highest efficiency level on the market within each equipment class. DOE also notes that it did not consider amended energy conservation standards for oil-fired storage water heaters in this NOPR; therefore, these units were not included in the engineering analysis.

EEI commented that DOE should adopt the amended efficiency levels in ASHRAE Standard 90.1–2013 for all CWH equipment classes, arguing this would prevent confusion in the marketplace and allow for earlier compliance dates than if higher standards are proposed. (EEI, No. 8 at p. 2) In response, DOE notes that ASHRAE Standard 90.1–2013 only raised efficiency standards for commercial oil-fired storage water heaters, but DOE also has an independent statutory obligation to review standards for the other CWH equipment classes. In the July 2015 ASHRAE equipment final rule, DOE determined that a thermal efficiency level for oil-fired storage water heaters more stringent than that adopted in ASHRAE Standard 90.1–2013 would not be economically justified and technologically feasible according to the seven criteria outlined in section II.A. 80 FR 42614 (July 17, 2015). Therefore, DOE adopted the amended thermal efficiency level from ASHRAE Standard 90.1–2013 for commercial oil-fired storage water heaters with a compliance date of October 9, 2015, as required by the statute. *Id.* Thus, any proposed increased standards in this rulemaking will not affect the compliance date for the amended standard adopted from ASHRAE Standard 90.1–2013. Because DOE is not considering higher thermal efficiency standards for commercial oil-fired storage water heaters in this rulemaking and given DOE's history of amending energy conservation standards for ASHRAE Standard 90.1 equipment, DOE does not believe proposed increased standards in this rulemaking will lead to confusion in the marketplace.

Joint Advocates commented that the max-tech efficiency levels should be identified by examining the most efficient technologies on the global market as opposed to just the U.S. market. (Joint Advocates, No. 7 at p. 3) As an example, Joint Advocates stated that CO_2 heat pump water heaters should be considered as a max-tech technology. As parts of its energy conservation standards rulemaking process, DOE considers equipment and designs sold both in the U.S. market and in the broader global market. However, for each technology identified from the global market, DOE must also consider its applicability and market barriers specifically for the U.S. market, and, thus, availability in other non-U.S. markets does not necessarily mean a technology will be technologically feasible in the domestic market. DOE considers technologies and their applicability to the U.S. markets in the rulemaking analyses. With regard to the specific recommendation to consider CO_2 heat pump water heaters, as discussed in section III.C.6, DOE notes that it does not currently have a test procedure for commercial heat pump water heaters (including CO_2 heat pump water heaters), and plans to consider energy conservation standards for commercial heat pump water heaters in a future rulemaking.

DOE established intermediate and max-tech standby loss efficiency levels for each equipment class of storage water heaters. Standby loss is a function of rated volume for gas-fired storage water heaters; however, in section III.I of this NOPR, DOE proposes changes to its certification, compliance, and enforcement regulations that would require the rated volume to be based on the mean of the measured volumes in the sample. DOE believes that to be compliant with these proposed changes, most manufacturers with units having a rated storage volume that does not equal the measured volume will re-rate the storage volumes of their current models based on the measured volumes, as opposed to changing their designs so that the measured storage volume increases to the current rated volume. Therefore, in analyzing market standby loss data for this NOPR, DOE accounted for this change by calculating the maximum standby loss levels under consideration using the measured volume as reported in the AHRI Directory for each model.

Standby loss is a function of storage volume (and input for gas-fired and oil-fired storage water heaters) and is affected by many aspects of the design of a water heater. Additionally, standby loss is not widely reported in manufacturer literature. DOE was not able to find any CWH equipment literature that reported standby loss, and, therefore, relied on data obtained from the AHRI Directory. However, there is significant variation in reported standby loss values in the AHRI Directory—*i.e.,* standby loss values for power-vented non-condensing residential-duty gas-fired storage water heaters range from 48 percent to 102 percent[39] of the current standby loss standard. Also, most manufacturers do not disclose the presence of technology options that affect standby loss, including insulation thickness and type, and baffle design, in their publicly-available literature. Therefore, DOE analyzed technology options commonly used on the market to help guide its selection of standby loss levels.

One possible source of variation in reported standby loss values is variation in unreported technology options, as previously discussed. Additionally, during manufacturer interviews, manufacturers explained that the current standby loss test procedure leads to significant variation in test results from lab to lab, and sometimes even within the same lab. Several reasons given for this variation include the air draft in the area around the water heater, the wide tolerance for ambient temperature, lack of humidity specification, and variation in venting and insulation of connections. DOE addressed some of these sources of variation in the revised standby loss test procedure for commercial water heaters proposed in the 2016 CWH TP NOPR. (See EERE–2014–BT–TP–0008)

DOE developed its incremental and max-tech standby loss levels by considering levels currently on the market, designs detailed in publicly-available equipment literature, observations from equipment teardowns, and feedback from manufacturer interviews. For commercial gas-fired storage water heaters, DOE determined that the current minimum Federal standard can be met with installation of 1 inch of fiberglass insulation around the walls of the tank. Therefore, DOE considered 1 inch of fiberglass insulation to correspond to the baseline standby loss efficiency level. DOE then considered the next incremental standby loss level to correspond to the use of sprayed polyurethane foam insulation instead of fiberglass insulation. From a survey of units on the market, DOE considers switching from 1 inch of fiberglass insulation to 1 inch of foam insulation a more commonly used pathway to decrease standby loss than using 2 inches of fiberglass insulation. From equipment teardowns and manufacturer interviews, DOE found the highest insulation thickness available for commercial gas-fired water heaters to be 2 inches. Therefore, DOE considered the next incremental standby loss level, SL EL2, to correspond to 2 inches of polyurethane foam. While more-stringent standby loss levels than SL EL2 exist on the market, these more-stringent values are only rated for condensing units with specific heat exchanger designs. Because DOE does not wish to mandate specific heat exchanger designs for achieving condensing thermal efficiency levels, standby loss levels more stringent than SL EL2 were not analyzed. Therefore, DOE considered SL EL2 as the max-tech standby loss level for commercial gas-fired storage water heaters. Table IV.9 shows the technology options identified for each standby loss level for commercial gas-fired storage water heaters.

Based on a review of available equipment on the market and feedback from manufacturers, DOE analyzed all non-condensing commercial gas-fired storage water heaters (*i.e.,* water heaters rated at thermal efficiency levels between 80 percent and 82 percent) as including electromechanical flue dampers. Electromechanical flue dampers were only included in the analysis for non-condensing commercial gas-fired storage water heaters, because flue dampers are not used with mechanical draft systems, which are required for condensing units. In place of standby loss reduction from electromechanical flue dampers, DOE included standby loss reduction from mechanical draft systems for all condensing commercial gas-fired storage water heaters in its calculated standby loss levels. Therefore, for commercial gas-fired storage water heaters, DOE considered baseline non-condensing equipment to include electromechanical flue dampers and all condensing equipment to include mechanical draft systems, both of which act to reduce standby losses out the flue.

TABLE IV.9—TECHNOLOGY OPTIONS IDENTIFIED AT EACH STANDBY LOSS EFFICIENCY LEVEL FOR COMMERCIAL GAS-FIRED STORAGE WATER HEATERS

Standby loss level	Technology Options
SL EL0—Baseline	1″ fiberglass insulation.
SL EL1	1″ foam insulation.
SL EL2	2″ foam insulation.

For residential-duty gas-fired storage water heaters, DOE has tentatively concluded that the current Federal standard may be met through use of 1 inch of polyurethane foam insulation. From surveying commercially-available equipment, DOE notes that all baseline residential-duty gas-fired storage water heaters have a standing pilot and do not use flue dampers. Therefore, in addition to increasing the thickness of foam insulation, DOE also considered electromechanical flue dampers and electronic ignition as technology options for reducing standby loss. Electromechanical flue dampers were only considered as a technology option for non-condensing residential-duty gas-fired storage water heaters, because flue dampers are not used with mechanical draft systems. Therefore, for residential-duty gas-fired storage water heaters, DOE considered electromechanical flue dampers to be a technology option not featured in baseline non-condensing equipment, and considered mechanical draft systems to be featured in all condensing equipment. Similarly to commercial gas-fired storage water heaters, both of these technologies act to reduce standby losses out the flue.

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[39] Because DOE calculated the maximum standby loss using measured storage volume instead of the rated storage volume, some units at or near the maximum allowable standby loss level have a standby loss level that exceeds the current standard when calculated using the measured volume.

For condensing residential-duty gas-fired storage water heaters, rated standby loss market data show that the most-efficient standby levels are only achieved by models with particular condensing heat exchanger designs. Specifically, DOE observed that the most-efficient standby loss level on the market is only achieved by a model with 90-percent thermal efficiency. It is not evident that this standby level can be reached by heat exchanger designs that also yield more-efficient condensing thermal efficiency levels. DOE chose not to analyze standby loss levels that have not been demonstrated to be achievable with more-efficient thermal efficiency level designs, because thermal efficiency typically will have a greater impact on the energy use of CWH equipment than standby loss. To ensure the continued availability of condensing CWH equipment with thermal efficiencies above 90 percent, DOE has considered an amended standby loss level that is reduced to 48 percent of the current standby loss standard as the max-tech standby loss level. DOE's market assessment shows that this standby loss level can be achieved by all condensing residential-duty gas-fired storage water heaters currently on the market. To inform the selection of SL EL0 for condensing residential-duty gas-fired storage water heaters, DOE considered the increase in standby loss that would occur from reducing the thickness of polyurethane foam insulation from 2 inches to 1 inch. Table IV.10 shows the technology options corresponding to each standby loss level selected for residential-duty gas-fired storage water heaters. As previously discussed, electromechanical flue dampers were only considered as a technology option for non-condensing equipment; therefore, SL EL2 and SL EL3 were only analyzed for non-condensing residential-duty gas-fired storage water heaters.

TABLE IV.10—TECHNOLOGY OPTIONS IDENTIFIED AT EACH STANDBY LOSS EFFICIENCY LEVEL FOR RESIDENTIAL-DUTY GAS-FIRED STORAGE WATER HEATERS

Standby loss level	Technology options
SL EL0—Baseline	1″ foam insulation, standing pilot.
SL EL1	2″ foam insulation, electronic ignition.
SL EL2	1″ foam insulation, electronic ignition, electromechanical flue damper.
SL EL3	2″ foam insulation, electronic ignition, electromechanical flue damper.

For electric storage water heaters, DOE determined that the current Federal standard may be met through use of 2 inches of polyurethane foam insulation. Therefore, this design was selected to represent the baseline standby loss level. The more-stringent standby loss level that DOE considered, representing the max-tech efficiency level, corresponds to 3 inches of polyurethane foam insulation. Table IV.11 shows the standby loss levels and technology options identified at each level for electric storage water heaters.

TABLE IV.11—TECHNOLOGY OPTIONS IDENTIFIED AT EACH STANDBY LOSS EFFICIENCY LEVEL FOR ELECTRIC STORAGE WATER HEATERS

Standby loss level	Technology options
SL EL0—Baseline	2″ foam insulation.
SL EL1	3″ foam insulation.

To inform the selection of standby loss levels, DOE performed heat loss calculations for representative equipment for each equipment class. These calculations yielded more stringent standby loss levels corresponding to the identified technology options. Chapter 5 of the NOPR TSD provides details on these heat loss calculations. Standby loss levels are shown in Table IV.12, Table IV.13, and Table IV.14 in terms of Btu/h for the representative equipment. However, to modify the current Federal standard, factors were developed to multiply by the current maximum standby loss equation for each equipment class, based on the ratio of standby loss at each efficiency level to the current standby loss standard. The translation from standby loss values to maximum standby loss equations is described in further detail in section IV.C.8.

For commercial and residential-duty gas-fired storage water heaters, standby loss is measured predominantly as a function of fuel flow used to heat the stored water during the standby loss test, with a small contribution of electric power consumption (if the unit requires a power supply). Because standby loss is calculated using the fuel consumed during the test to maintain the water temperature, the standby loss is dependent on the thermal efficiency of the water heater. DOE used data from independent testing of CWH equipment at a third-party laboratory to estimate the fraction of standby loss that can be attributed to fuel consumption or electric power consumption. For a given standby loss level (*i.e.,* SL EL0, SL EL1, or SL EL2), DOE scaled down (*i.e.,* made more stringent) the portion of the standby loss attributable to fuel consumption as thermal efficiency increased. Chapter 5 of the NOPR TSD explains these calculations, and the interdependence of thermal efficiency (E_t) and standby loss (SL) are explained in more detail. However, for condensing thermal efficiency levels for residential-duty gas-fired storage water heaters, DOE did not include dependence on thermal efficiency in its standby loss levels. As previously discussed, the most stringent standby loss level examined was a level that can be achieved by all condensing residential-duty gas-fired storage water heaters currently on the market. Because the examined level is currently met by all equipment at condensing thermal efficiency levels, DOE did not lower the stringency of the standby loss level for lower condensing thermal efficiency levels. Table IV.12, Table IV.13, and Table IV.14 show the examined standby loss levels for commercial gas-fired storage water heaters, residential-duty gas-fired storage water heaters, and electric storage water heaters, respectively.

TABLE IV.12—STANDBY LOSS LEVELS FOR COMMERCIAL GAS-FIRED STORAGE WATER HEATERS, 100 GALLON RATED STORAGE VOLUME, 199,000 Btu/h INPUT CAPACITY

Thermal efficiency level	Thermal efficiency (%)	Standby loss (Btu/h)		
		SL EL0	SL EL1	SL EL2
E_t EL0	80	1349	1148	993
E_t EL1	82	1316	1120	969
E_t EL2	90	1225	1043	902
E_t EL3	92	1199	1021	883
E_t EL4	95	1163	989	856
E_t EL5	99	1117	951	823

TABLE IV.13—STANDBY LOSS LEVELS FOR RESIDENTIAL-DUTY GAS-FIRED STORAGE WATER HEATERS, 75 GALLON RATED STORAGE VOLUME, 76,000 Btu/h INPUT CAPACITY

Thermal efficiency level	Thermal efficiency (%)	Standby loss (Btu/h)			
		SL EL0	SL EL1	SL EL2 *	SL EL3 *
E_t EL0	80	1048	836	811	707
E_t EL1	82	1022	816	791	690
E_t EL2	90	624	503		
E_t EL3	95	624	503		
E_t EL4	97	624	503		

* Electromechanical flue dampers were not considered as a technology option for condensing water heaters because flue dampers are not used with mechanical draft systems.

TABLE IV.14—STANDBY LOSS LEVELS FOR ELECTRIC STORAGE WATER HEATERS, 114 GALLON MEASURED STORAGE VOLUME

Thermal efficiency	Standby loss (Btu/h)		Standby loss (%/h)	
		SL EL0	SL EL1	SL EL0
98%	353	298	0.54	0.45

DOE notes that because of its use of heat loss calculations corresponding to commonly used technology options to inform the selection of standby loss levels in addition to rated standby loss market data, the most stringent analyzed standby loss levels do not necessarily reflect the current market max-tech level for each equipment class. For some equipment thermal efficiency levels, the most stringent analyzed standby loss level may be less efficient than that of the most efficient unit on the market, and for other levels, it may be more efficient. While there may not be units on the market with a rated standby loss as efficient as some of the examined standby loss levels, DOE has determined these levels would be achievable through various technology options, including, but not limited to, those DOE examined for this analysis. Chapter 5 of the NOPR TSD includes a discussion of the following technology options with the potential to reduce standby loss that DOE did not consider for this analysis and the reasons for their exclusion: (1) Changing tank aspect ratio; (2) improved insulation on tank top and bottom; (3) greater coverage of foam insulation; and (4) improved baffling. DOE did not include standby loss reduction from baffling because of insufficient data for estimating the reduction, and therefore, DOE requests input on this matter as well as DOE's estimated standby loss reduction for electromechanical flue dampers and mechanical draft.

Issue 11: DOE seeks comment on all efficiency levels analyzed for CWH equipment, including thermal efficiency and standby loss levels. In particular, DOE is interested in the feasibility of the max-tech thermal efficiency levels and standby loss levels, including whether these efficiency levels can be achieved using the technologies screened-in during the screening analysis (see section IV.B), and whether higher efficiencies are achievable using technologies that were screened-in during the screening analysis. DOE is also interested in the feasibility of achieving the analyzed standby loss levels using the identified technology options.

Issue 12: DOE seeks input on the reduction in standby loss of gas-fired storage water heaters from the technology options for which DOE estimated standby loss levels (*i.e.*, varying insulation type and thickness, electromechanical flue dampers, and mechanical draft) and the technology options for which DOE did not have sufficient data to develop an estimate (including baffling).

4. Teardown Analysis

After selecting a representative input capacity and representative storage volume (for storage water heaters) for each equipment class, DOE selected equipment near both the representative values and the selected efficiency levels for its teardown analysis. DOE gathered information from these teardowns to create detailed BOMs that included all components and processes used to manufacture the equipment. To assemble the BOMs and to calculate the manufacturing product costs (MPCs) of CWH equipment, DOE disassembled multiple units into their base components and estimated the materials, processes, and labor required for the manufacture of each individual component, a process known as a "physical teardown." Using the data gathered from the physical teardowns, DOE characterized each component according to its weight, dimensions, material, quantity, and the manufacturing processes used to fabricate and assemble it.

DOE also used a supplementary method called a "catalog teardown," which examines published manufacturer catalogs and supplementary component data to allow DOE to estimate the major differences between a unit of equipment that was physically disassembled and a similar unit of equipment that was not. For catalog teardowns, DOE gathered product data such as dimensions, weight, and design features from publicly-available information (*e.g.*, manufacturer catalogs and manufacturer Web sites). DOE also obtained information and data not typically found in catalogs, such as fan motor details or assembly details, from physical teardowns of similar equipment or through estimates based on industry knowledge. The teardown analysis used data from 11 physical teardowns and 21 catalog teardowns to inform development of cost estimates for CWH equipment.

The teardown analysis allowed DOE to identify the technologies that manufacturers typically incorporate into their equipment, along with the efficiency levels associated with each technology or combination of technologies. The end result of each teardown is a structured BOM, which DOE developed for each of the physical and catalog teardowns. The BOMs incorporate all materials, components, and fasteners (classified as either raw materials or purchased parts and assemblies) and characterize the materials and components by weight, manufacturing processes used, dimensions, material, and quantity. The BOMs from the teardown analysis were then used to calculate the MPCs for each type of equipment that was torn down. The MPCs resulting from the teardowns were then used to develop an industry average MPC for each equipment class analyzed. Chapter 5 of the NOPR TSD provides more details on BOMs and how they were used in determining the manufacturing cost estimates.

During the manufacturer interviews, DOE requested feedback on the engineering analysis and the assumptions that DOE used. DOE used the information it gathered from those interviews, along with the information obtained through the teardown analysis, to refine the assumptions and data used to develop MPCs. Chapter 5 of the NOPR TSD provides additional details on the teardown process.

During the teardown process, DOE gained insight into the typical technology options manufacturers use to reach specific efficiency levels. DOE can also determine the efficiency levels at which manufacturers tend to make major technological design changes. Table IV.15, Table IV.16, Table IV.17, and Table IV.18 show the major technology options DOE observed and analyzed for each thermal efficiency level and equipment class. Technology options that manufacturers use to reach each standby loss level are discussed in section IV.C.3.b. DOE notes that in equipment above the baseline, and sometimes even at the baseline efficiency, additional features and functionalities that do not impact efficiency are often used to address non-efficiency-related consumer demands (*e.g.*, related to comfort or noise when operating). DOE did not include the additional costs for options such as advanced building communication and control systems or powered anode rods that are included in many of the high-efficiency units currently on the market, as they do not improve efficiency but do add cost to the unit. In other words, DOE assumed the same level of non-efficiency related features and functionality at all efficiency levels.

TABLE IV.15—TECHNOLOGIES IDENTIFIED AT EACH THERMAL EFFICIENCY LEVEL FOR COMMERCIAL GAS-FIRED STORAGE WATER HEATERS

Thermal efficiency level	Thermal efficiency (%)	Design changes*
E_t EL0	80	
E_t EL1	82	Increased heat exchanger area.
E_t EL2	90	Condensing heat exchanger, forced draft blower, premix burner.
E_t EL3	92	Condensing heat exchanger, forced draft blower, premix burner, increased heat exchanger surface area.
E_t EL4	95	Condensing heat exchanger, forced draft blower, premix burner, increased heat exchanger surface area.
E_t EL5	99	Condensing heat exchanger, forced draft blower, premix burner, increased heat exchanger surface area.

* The condensing heat exchanger surface area incrementally increases at each EL from E_t EL2 to E_t EL5.

TABLE IV.16—TECHNOLOGIES IDENTIFIED AT EACH THERMAL EFFICIENCY LEVEL FOR RESIDENTIAL-DUTY GAS-FIRED STORAGE WATER HEATERS

Thermal efficiency level	Thermal efficiency (%)	Design changes*
E_t EL0	80	
E_t EL1	82	Increased heat exchanger area.
E_t EL2	90	Condensing heat exchanger, induced draft blower.
E_t EL3	95	Condensing heat exchanger, forced draft blower, premix burner, increased heat exchanger surface area.
E_t EL4	97	Condensing heat exchanger, forced draft blower, premix burner, increased heat exchanger surface area.

* The condensing heat exchanger surface area incrementally increases at each EL from E_t EL2 to E_t EL4.

TABLE IV.17—TECHNOLOGIES IDENTIFIED AT EACH THERMAL EFFICIENCY LEVEL FOR GAS-FIRED TANKLESS WATER HEATERS

Thermal efficiency level	Thermal efficiency (%)	Design changes*
E_t EL0	80	
E_t EL1	82	Increased heat exchanger area.
E_t EL2	84	Increased heat exchanger area.
E_t EL3	92	Secondary condensing heat exchanger.
E_t EL4	94	Secondary condensing heat exchanger, increased heat exchanger surface area.
E_t EL5	96	Secondary condensing heat exchanger, increased heat exchanger surface area.

*The heat exchanger surface area incrementally increases at each EL from E_t EL0 to E_t EL2 and from E_t EL3 to E_t EL5.

TABLE IV.18—TECHNOLOGIES IDENTIFIED AT EACH THERMAL EFFICIENCY LEVEL FOR GAS-FIRED HOT WATER SUPPLY BOILERS

Thermal efficiency level	Thermal efficiency (%)	Design changes*
E_t EL0	80	
E_t EL1	82	Increased heat exchanger area.
E_t EL2	84	Increased heat exchanger area, inducer blower.
E_t EL3	92	Condensing heat exchanger, forced draft blower, premix burner.
E_t EL4	94	Condensing heat exchanger, forced draft blower, premix burner, increased heat exchanger surface area.
E_t EL5	96	Condensing heat exchanger, forced draft blower, premix burner, increased heat exchanger surface area.

*The heat exchanger surface area incrementally increases at each EL from E_t EL0 to E_t EL2 and from E_t EL3 to E_t EL5.

DOE notes from surveying units currently on the market that the only design change for many efficiency levels is an increased heat exchanger surface area. Based upon heat exchanger calculations and feedback from manufacturer interviews, DOE determined a factor by which heat exchangers would need to expand to reach higher thermal efficiency levels. This factor was higher for condensing efficiency levels than for non-condensing efficiency levels. Chapter 5 of the NOPR TSD provides more information on these heat exchanger sizing calculations, as well as on the technology options DOE considered at each efficiency level.

5. Manufacturing Production Costs

After calculating the cost estimates for all the components in each teardown unit, DOE totaled the cost of materials, labor, depreciation, and direct overhead used to manufacture each type of equipment in order to calculate the manufacturing production cost (MPC). DOE used the results of the teardowns on a market-share weighted average basis to determine the industry average cost increase to move from one efficiency level to the next. DOE reported the MPCs in aggregated form to maintain confidentiality of sensitive component data. DOE obtained input from manufacturers during the manufacturer interview process on the MPC estimates and assumptions. Chapter 5 of the NOPR TSD contains additional details on how DOE developed the MPCs and related results.

DOE estimated the MPC at each combination of thermal efficiency and standby loss levels considered for representative equipment of each equipment class. Table IV.19, Table IV.20, Table IV.21, and Table IV.22 show the MPC for each efficiency level for each equipment class. DOE calculated the percentages attributable to each element of total production costs (*i.e.,* materials, labor, depreciation, and overhead). These percentages are used to validate the assumptions by comparing them to manufacturers' actual financial data published in annual reports, along with feedback obtained from manufacturers during interviews. DOE uses these production cost percentages in the MIA (see chapter 12 of the NOPR TSD).

TABLE IV.19—MANUFACTURER PRODUCTION COSTS FOR COMMERCIAL GAS-FIRED STORAGE WATER HEATERS, 100-GALLON RATED STORAGE VOLUME, 199,000 Btu/h INPUT CAPACITY

Thermal efficiency level	Thermal efficiency (%)	Standby loss efficiency level		
		SL EL0	SL EL1	SL EL2
E_t EL0	80	$1,023.59	$1,029.70	$1,051.20
E_t EL1	82	1,046.14	1,052.31	1,074.10
E_t EL2	90	1,253.56	1,259.97	1,282.19
E_t EL3	92	1,263.93	1,270.35	1,292.63
E_t EL4	95	1,288.05	1,294.51	1,316.95
E_t EL5	99	1,331.09	1,335.00	1,360.66

TABLE IV.20—MANUFACTURER PRODUCTION COSTS FOR RESIDENTIAL-DUTY GAS-FIRED STORAGE WATER HEATERS, 75-GALLON RATED STORAGE VOLUME, 76,000 Btu/h INPUT CAPACITY

Thermal efficiency level	Thermal efficiency (%)	Standby loss efficiency level			
		SL EL0	SL EL1	SL EL2	SL EL3
E_t EL0	80	$354.00	$401.35	$441.95	$462.14
E_t EL1	82	359.37	407.06	447.89	468.18
E_t EL2	90	667.75	685.67		
E_t EL3	95	810.33	828.15		
E_t EL4	97	818.60	836.43		

TABLE IV.21—MANUFACTURER PRODUCTION COSTS FOR ELECTRIC STORAGE WATER HEATERS, 114-GALLON MEASURED STORAGE VOLUME

Thermal efficiency	Standby loss efficiency level	
	SL EL0	SL EL1
98%	$854.25	$883.40

TABLE IV.22—MANUFACTURER PRODUCTION COSTS FOR GAS-FIRED INSTANTANEOUS WATER HEATERS AND HOT WATER SUPPLY BOILERS

Thermal efficiency level	Thermal efficiency (%)	Equipment group	
		Gas-fired tankless water heaters	Gas-fired hot water supply boilers
		250,000 Btu/h	399,000 Btu/h
E_t EL0	80	$629.67	$1,182.00
E_t EL1	82	638.62	1,205.56
E_t EL2	84	647.38	1,411.17
E_t EL3	92	790.45	2,671.86
E_t EL4	94	804.87	2,826.90
E_t EL5	96	824.45	2,981.94

6. Manufacturer Markup

To account for manufacturers' non-production costs and profit margin, DOE applies a non-production cost multiplier (the manufacturer markup) to the full MPC. The resulting MSP is the price at which the manufacturer can recover all production and non-production costs and earn a profit. To meet new or amended energy conservation standards, manufacturers often introduce design changes to their equipment lines that result in increased MPCs. Depending on the competitive pressures, some or all of the increased production costs may be passed from manufacturers to retailers and eventually to commercial consumers in the form of higher purchase prices. As production costs increase, manufacturers typically incur additional overhead. The MSP should be high enough to recover the full cost of the equipment (*i.e.*, full production and non-production costs) and yield a profit. The manufacturer markup has an important bearing on profitability. A high markup under a standards scenario suggests manufacturers can readily pass along the increased variable costs and some of the capital and product conversion costs (the one-time expenditure) to commercial consumers. A low markup suggests that manufacturers will not be able to recover as much of the necessary investment in plant and equipment.

To calculate the manufacturer markups, DOE used 10–K reports[40] submitted to the U.S. Securities and Exchange Commission (SEC) by the three publicly-owned companies that manufacture CWH equipment. The financial figures necessary for calculating the manufacturer markup are net sales, costs of sales, and gross profit. DOE averaged the financial figures spanning the years 2008 to 2013 in order to calculate the markups for CWH equipment. DOE acknowledges that there are numerous manufacturers of CWH equipment that are privately-held companies, which do not file SEC 10–K reports. In addition, while the publicly-owned companies file SEC 10–K reports, the financial information summarized may not be exclusively for the CWH portion of their business and can also include financial information from other product sectors, whose margins could be quite different from that of the CWH industry. DOE discussed the manufacturer markup with manufacturers during interviews, and used the feedback to modify the markup calculated through review of SEC 10–K reports. See chapter 5 of the NOPR TSD for more details about the manufacturer markup calculation.

7. Shipping Costs

Manufacturers of CWH equipment typically pay for shipping to the first step in the distribution chain. Freight is not a manufacturing cost, but because it is a substantial cost incurred by the manufacturer, DOE accounted for shipping costs of CWH equipment separately from other non-production costs that comprise the manufacturer markup. To calculate the MSP for CWH equipment, DOE multiplied the calculated MPC at each efficiency level by the manufacturer markup and added shipping costs for equipment at the given efficiency level.

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[40] U.S. Securities and Exchange Commission, Annual 10–K Reports (Various Years) (Available at: *http://sec.gov*).

In this rulemaking, shipping costs for all classes of CWH equipment were determined based on the area of floor space occupied by the unit. Most CWH equipment units are typically too tall to be double-stacked in a vertical fashion, and they cannot be shipped in any other orientation other than vertical. To calculate these shipping costs, DOE calculated the cost per area of a trailer, based on the standard dimensions of a 53-foot trailer and an estimated 5-year average cost per shipping load that approximates the cost of shipping the equipment from the middle of the country to either coast. Next, DOE examined the average sizes of equipment in each equipment class at each efficiency level and determined the number of units that would fit in a trailer. DOE then calculated the market-weighted average shipping cost per unit using the cost per trailer load. For gas-fired tankless water heaters, DOE assumed units could be double-stacked, due to the smaller size and weight of these units. DOE also assumed tankless water heaters would be manufactured overseas, and, therefore, costs of shipping a 40-foot container on both a cargo ship and a truck were included. Chapter 5 of the NOPR TSD contains additional details about DOE's shipping cost assumptions and DOE's shipping cost estimates.

Issue 13: DOE seeks comment on its methodology for manufacturer production cost, manufacturer selling price, and shipping cost estimates for each equipment class and efficiency level.

8. Maximum Standby Loss Equations

As part of the engineering analysis for commercial storage water heaters and residential-duty commercial storage water heaters, DOE reviewed the maximum standby loss equations that define the existing Federal energy conservation standards for gas-fired and electric storage water heaters. The equations allow DOE to expand the analysis on the representative rated input capacity and storage volume to the full range of values covered under the existing Federal energy conservation standards.

DOE uses equations to characterize the relationship between rated input capacity, rated storage volume, and standby loss. The equations allow DOE to account for the increases in standby loss as input capacity and tank volume increase. As the tank storage volume increases, the tank surface area increases. The larger surface area results in higher heat transfer rates that result in higher jacket losses. As the input capacity increases for gas-fired and oil-fired water heaters, the surface area of flue tubes may increase, thereby providing additional area for heat loss through the flue tubes. The current equations show that for each storage water heater equipment class, the allowable standby loss increases as the rated storage volume increases, and also as the input rating increases for gas-fired and oil-fired water heaters. The current form of the standby loss standard (in Btu/h) for commercial and residential-duty commercial gas-fired and oil-fired water heaters is shown in the multivariable equation below, depending upon both rated input (Q, Btu/h) and rated storage volume (V_r, gal).

$$SL = \frac{Q}{800} + 110\sqrt{V_r}$$

The current form of the standby loss standard (in %/h) for electric storage water heaters is shown below, dependent only on measured storage volume (V_m, gal). DOE notes that standby loss for electric storage water heaters is not dependent on input capacity because there are no flue tubes or heat exchangers, and a higher input capacity is met with technology options that do not significantly affect the standby loss, typically a combination of either more heating elements or higher-power heating elements.

$$S = 0.3 + \frac{27}{V_m}$$

In order to consider amended standby loss standards for CWH equipment, which are in equation form, DOE would need to consider revising the current standards equations. However, in the October 2014 RFI, DOE identified two potential issues with considering amended maximum standby loss standards equations for commercial gas-fired and oil-fired storage water heaters, and requested comment on approaches for amending the equations. 79 FR 62899, 62905 (Oct. 21, 2014). The first potential issue DOE recognized was how to modify the equation given that there is no intercept in the equation. Because the current standard depends on both volume and input without an intercept, it is only possible to change the slopes for each variable when modifying the standard to fit the analyzed efficiency levels. Changing the slopes could be undesirable if shifting the standard up or down (while maintaining the slopes) would better fit the distribution of units outside the representative input and volume. DOE sought feedback on this issue including the proposal of establishing discrete bins for one variable (volume or input), thereby yielding single-variable equations in each bin. The second issue raised in the RFI was that DOE observed that standby loss is dependent on thermal efficiency (as discussed in section IV.C.3.b of this document) and sought comment on whether thermal efficiency should be taken into account in the standby loss standard. *Id.*

A.O. Smith, Bradford White, Rheem, and AHRI all commented that the structure of the current standby loss standard should not be changed, as it was developed as the result of deliberate, technical discussions. All of these commenters also stated that any changes to the existing structure would bring unnecessary complexity to the analysis, and could require test procedure changes. (A.O. Smith, No. 2 at p. 3; Bradford White, No. 3 at p. 2; Rheem, No. 10 at p. 1; AHRI, No. 5 at p. 3) Joint Advocates suggested that the use of discrete bins would be problematic, due to discontinuities at the bin boundaries. (Joint Advocates, No. 7 at p. 4) Joint Advocates also mentioned allowing the use of rated volume for classification but measured volume for standby loss calculation as an advantage of using continuous equations over bins. Further, Joint Advocates suggested that a standby loss standard should be set that requires some kind of design option that limits flue losses in standby mode. (Joint Advocates, No. 7 at p. 4)

DOE agrees with the commenters that bringing unnecessary complexity to the analysis is not desirable. Therefore, DOE has tentatively decided to consider more-stringent standby loss standards by multiplying the current maximum standby loss equations by reduction factors. The use of reduction factors maintains the structure of the current maximum standby loss equations and does not require the creation of bins or an intercept for altering the equations. This approach does not change the dependence of maximum standby loss on input and rated storage volume or introduce undesirable complexity to the equation, but still allows DOE to consider increased stringency for standby loss energy conservation standards. This reduction factor is the product of two multipliers: one that reduces the standard based upon thermal efficiency, and one that reduces the standard based upon heat loss calculations for standby-loss-reducing technology options identified by DOE (see section IV.C.3.b). The multiplier based upon thermal efficiency uses the ratio of the proposed thermal efficiency level to the current thermal efficiency standard, and takes into account the portion (if any) of standby loss attributable to electric power consumption. The multiplier based upon heat loss calculations uses the ratio of standby loss at each standby loss efficiency level (at the baseline thermal efficiency level) to the current standby loss standard. However, as discussed in section IV.C.3.b, DOE used market standby loss data instead of heat loss calculations and thermal efficiency levels to develop standby loss reduction factors for condensing residential-duty gas-fired storage water heaters. Table IV.23, Table IV.24, and Table IV.25 show the overall standby loss reduction factors for each equipment class and efficiency level. The factors corresponding to the proposed TSL in this NOPR were multiplied by the current standby loss equation to yield the proposed maximum standby loss equations for each equipment class (see section V.C). Chapter 5 of the NOPR TSD includes more detail on the calculation of the standby loss reduction factor and the thermal efficiency-based and heat loss-based multipliers it comprises.

TABLE IV.23—STANDBY LOSS REDUCTION FACTORS FOR COMMERCIAL GAS-FIRED STORAGE WATER HEATERS

Thermal efficiency level	Thermal efficiency (%)	Standby loss reduction factor		
		SL EL0	SL EL1	SL EL2
E_t EL0	80	1.00	0.85	0.74
E_t EL1	82	0.98	0.83	0.72
E_t EL2	90	0.91	0.77	0.67
E_t EL3	92	0.89	0.76	0.65
E_t EL4	95	0.86	0.73	0.63
E_t EL5	99	0.83	0.70	0.61

TABLE IV.24—STANDBY LOSS REDUCTION FACTORS FOR RESIDENTIAL-DUTY GAS-FIRED STORAGE WATER HEATERS

Thermal efficiency level	Thermal efficiency (%)	Standby loss reduction factor			
		SL EL0	SL EL1	SL EL2	SL EL3
E_t EL0	80	1.00	0.80	0.77	0.67
E_t EL1	82	0.98	0.78	0.76	0.66
E_t EL2	90	0.60	0.48	....	....
E_t EL3	95	0.60	0.48	....	....
E_t EL4	97	0.60	0.48	....	....

TABLE IV.25—STANDBY LOSS REDUCTION FACTORS FOR ELECTRIC STORAGE WATER HEATERS

Thermal efficiency	Standby loss reduction factor	
	SL EL0	SL EL1
98%	1.00	0.84

In response to Joint Advocates, DOE notes that although the proposed standby loss equations depend on rated volume, DOE proposes changes in section III.I of this NOPR to its certification, compliance, and enforcement regulations that require that the rated volume must equal the mean of the measured storage volumes of the units in the sample. DOE also notes that it has selected standby loss levels for analysis of non-condensing residential-duty commercial gas-fired storage water heaters that DOE believes would be achieved through the incorporation of electromechanical flue dampers, despite the fact that DOE observed no residential-duty gas-fired storage water heaters with electromechanical flue dampers currently on the market. However, pursuant to EPCA, DOE can establish energy conservation standards that set either a single performance standard or a single design requirement, not both. (42 U.S.C. 6311(18)) Therefore, DOE has not proposed a design requirement for a feature that decreases flue standby losses. After examining the market, DOE has tentatively concluded that all commercial gas-fired storage water heaters on the market currently use electromechanical flue dampers. DOE also notes that a flue damper would not be used with a condensing gas-fired water heater.

Issue 14: DOE seeks comment on its proposed method for modifying the maximum standby loss equations for commercial gas-fired storage water heaters and residential-duty storage water heaters.

9. Conversion of Standards to Uniform Energy Factor

As part of the analysis in this rulemaking, DOE analyzed efficiency levels for residential-duty commercial water heaters in terms of the thermal efficiency and standby loss metrics. However, in the July 2014 final rule, DOE established that residential-duty commercial water heaters would be covered by the new UEF metric. 79 40542, 40586 (July 11, 2014). Further, DOE proposed a method for converting the thermal efficiency and standby loss ratings to UEF using conversion factors in the April 2015 NOPR. 80 FR 20116, 20143 (April 14, 2015). In this NOPR, DOE converted the efficiency levels analyzed for residential-duty commercial gas-fired water heaters from thermal efficiency and standby loss to UEF using the conversion factors proposed in the April 2015 NOPR for residential-duty water heaters for all four draw patterns: High, medium, low, and very small.

For residential-duty commercial storage water heaters, DOE applied each analyzed standby loss level to each unit on the market, calculating the allowed maximum standby loss. The UEF was then calculated for each unit for each draw pattern using this standby loss level and each thermal efficiency level. Because the energy conservation standards for residential-duty commercial water heaters proposed in the April 2015 NOPR were denominated in terms of UEF and had linear equations dependent only on rated volume, in this NOPR DOE developed UEF standard equations for residential-duty gas storage water heaters consistent with this equation format. 80 FR 20116, 20147 (April 14, 2015). However, in section III.I, DOE proposes changes to its certification, compliance, and enforcement regulations that would require the rated volume to be based upon the mean of the measured volumes in a sample. Therefore, the maximum standby loss of units in this analysis to convert efficiency levels to UEF was calculated using the currently reported measured volume instead of the rated volume. A linear regression was performed between the measured volume of each unit and the calculated UEF for each unit, yielding a line of best-fit. Therefore, a line of best-fit was drawn relating UEF to measured volume for each of the four draw patterns. For each line of best-fit, the intercept was then decreased to translate the line down to pass through the point furthest below the line of best-fit (the point with the largest negative residual), creating a minimum line. DOE adopted these minimum lines when establishing the trial standard levels and as the proposed energy conservation standards for residential-duty commercial water heaters in this NOPR. Chapter 5 of the NOPR TSD includes additional detail on the conversion of energy conservation standards to UEF for residential-duty commercial water heaters.

Issue 15: DOE seeks comment on its approach to convert the thermal efficiency and standby loss levels analyzed for residential-duty commercial water heaters to UEF.

Table IV.26 shows the UEF levels calculated for each combination of thermal efficiency level and standby loss level, using the conversion factors proposed in the April 2015 NOPR.

TABLE IV.26—UEF LEVELS CORRESPONDING TO THERMAL EFFICIENCY AND STANDBY LOSS LEVELS

Thermal efficiency level	Thermal efficiency (%)	Standby loss efficiency level			
		SL EL0	SL EL1	SL EL2	SL EL3
E_t EL0	80	0.57	0.60	0.60	0.61
E_t EL1	82	0.58	0.61	0.61	0.62
E_t EL2	90	0.67	0.69		
E_t EL3	95	0.69	0.72		
E_t EL4	97	0.70	0.73		

D. Markups Analysis

The markups analysis develops appropriate markups in the distribution chain (*e.g.*, manufacturer markups, retailer markups, distributer markups, contractor markups, and sales taxes) to convert the estimates of manufacturer selling price derived in the engineering analysis to commercial consumer prices, which are then used in the LCC and PBP analysis and in the manufacturer impact analysis. DOE develops baseline and incremental markups based on the equipment markups at each step in the distribution chain. DOE developed supply chain markups in the form of multipliers that represent increases above equipment purchase costs for key market participants, including commercial water heating equipment wholesalers/distributors, modular building manufacturers and wholesalers/distributors, retailers, and mechanical contractors and general contractors working on behalf of commercial consumers. The incremental markup relates the change in the manufacturer sales price of higher-efficiency models (the incremental cost increase) to the change in commercial consumer price.

Four different markets exist for commercial water heating equipment: (1) New construction in the residential buildings sector, (2) new construction in the commercial buildings sector, (3) replacements in the residential buildings sector, and (4) replacements in the commercial buildings sector. DOE developed eight distribution channels to address these four markets.

For the residential and commercial buildings sectors, DOE characterizes the replacement distribution channels as follows:

- Manufacturer → Wholesaler → Mechanical Contractor → Commercial Consumer
- Manufacturer → Manufacturer Representative → Mechanical Contractor → Commercial Consumer
- Manufacturer → Retailer → Mechanical Contractor → Commercial Consumer

DOE characterizes the new construction distribution channels for the residential and commercial buildings sectors as follows:

- Manufacturer → Wholesaler → Mechanical Contractor → General Contractor → Commercial Consumer
- Manufacturer → Manufacturer Representative → Mechanical Contractor → General Contractor → Commercial Consumer
- Manufacturer → Retailer → General Contractor → Commercial Consumer

In addition to these distribution channels, there are scenarios in which manufacturers sell commercial water heating equipment directly to a commercial consumer through a national account, or a commercial consumer purchases the equipment directly from a retailer. These scenarios occur in both new construction and replacements markets and in both the residential and commercial sectors. In these instances, installation is typically accomplished by site personnel. These distribution channels are depicted as follows:

- Manufacturer → Commercial Consumer
- Manufacturer → Retailer → Commercial Consumer

In response to the October 2014 RFI, several stakeholders commented on distribution channels. First, stakeholders provided inputs regarding the types of distribution channels for commercial water heating equipment. Rheem agreed that the distribution channel types outlined in the October 2014 RFI were appropriate and sufficient to describe the existing U.S. market. (Rheem, No. 10 at p. 4) AHRI and Bradford White suggested that DOE should address a distribution channel that goes from a manufacturer to a manufacturer's representative, who then sells to the commercial consumer. (AHRI, No. 5 at p. 4; Bradford White, No. 3 at p. 2) DOE addressed this comment by incorporating a manufacturer's representative distribution channel in its markups analysis for the NOPR.

In the October 2014 RFI, DOE also sought input on the percentage of equipment distributed through the various types of distribution channels. 79 FR 62899, 62906 (Oct. 21, 2014). Rheem stated that the vast majority of commercial water heating equipment is distributed through the wholesale channel. (Rheem, No. 10 at p. 4) DOE assumes that Rheem's responses reflect its experience, rather than a characterization of the industry overall. For this document, DOE estimated the percentage of shipments going through each distribution channel for each equipment class. The majority of shipments were allocated to the wholesaler channel, ranging from 60 to 70 percent, depending on the equipment class and market type.

Last, DOE asked in the October 2014 RFI for recent data and recommendations to establish the markups for the parties involved with the distribution of the equipment. 79 FR 62899, 62906 (Oct. 21, 2014). In response, Rheem stated that the markups varied within each market, making it difficult to roll up to a total market analysis. Distributors and their commercial consumers were reticent to provide Rheem with markup data. (Rheem, No. 10 at p. 4) DOE acknowledges that private businesses were reticent to provide potentially sensitive information about pricing to other market participants or DOE. To develop markups for this NOPR, DOE utilized several sources, including: (1) The Heating, Air-Conditioning & Refrigeration Distributors International (HARDI) 2013 Profit Report[41] to develop wholesaler markups; (2) the 2005 Air Conditioning Contractors of America's (ACCA) financial analysis for the heating, ventilation, air-conditioning, and refrigeration (HVACR) contracting industry[42] to develop mechanical contractor markups; (3) the U.S. Census Bureau's 2007 Economic Census data[43] for the commercial and institutional building construction industry to develop mechanical and general contractor markups; and (4) the U.S. Census Bureau's 2012 Annual Retail Trade Survey[44] data to develop retail markups.

In addition to markups of distribution channel costs, DOE derived State and local taxes from data provided by the Sales Tax Clearinghouse.[45] Because both distribution channel costs and sales tax vary by State, DOE developed its markups to vary by State. Chapter 6 of the NOPR TSD provides additional detail on markups.

Issue 16: DOE seeks comment on the percentages of shipments allocated to the distribution channels relevant to each equipment class.

Issue 17: DOE requests comment on the estimated market and sector weights for shipments by equipment class.

Issue 18: DOE requests comment on the development of markups at each point in the distribution chain and the overall markup by equipment class.

E. Energy Use Analysis

The purpose of the energy use analysis is to assess the energy requirements (*i.e.*, annual energy consumption) of commercial water heating (CWH) equipment described in the engineering analysis for a representative sample of building types that utilize the equipment, and to assess the energy-savings potential of increased equipment efficiencies. DOE uses the annual energy consumption and energy-savings potential in the LCC and PBP analysis to establish the operating cost savings at various equipment efficiency levels.[46] DOE estimated the annual energy consumption of CWH equipment at specified energy efficiency levels across a range of climate zones, building characteristics, and water heating applications. The annual energy consumption includes use of natural gas, liquefied petroleum gas (LPG), or electricity for hot water production, as well as use of electricity for auxiliary components.

In the October 2014 RFI, DOE indicated that it would estimate the annual energy consumption of CWH equipment at specified energy efficiency levels across a range of applications, building types, and climate zones. 79 FR 62899, 62906–62907 (Oct. 21, 2014). DOE developed representative hot water volumetric loads and water heating energy usage for the selected representative products for each equipment class and building type combination analyzed. This approach captures the variability in CWH equipment use due to factors such as building activity, schedule, occupancy, tank losses, and distribution system piping losses.

For commercial building types, DOE used the daily load schedules and normalized peaks from the 2013 DOE Commercial Prototype Building Models[47] to develop gallons-per-day hot water loads for the analyzed commercial building types.[48] DOE assigned these hot water loads on a square-foot basis to associated commercial building records in the EIA's 2003 Commercial Building Energy Consumption Survey[49] (CBECS) in accordance with their principal building activity subcategories. For residential building types, DOE used the hot water loads model developed by Lawrence Berkeley National Laboratory (LBNL) for the 2010 rulemaking for "Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters."[50] DOE applied this model to the residential building records in the EIA's 2009 Residential Energy Consumption Survey (RECS).[51] For RECS housing records in multi-family buildings, DOE focused only on apartment units that share water heaters with other units in the building. Since the LBNL model was developed to analyze individual apartment loads, DOE had to modify it for the analysis of whole building loads. DOE established statistical average occupancy of RECS apartment unit records when determining the individual apartment unit's load. DOE also developed individual apartment loads as if they were equipped with a storage water heater in accordance with LBNL's methodology. Then, DOE multiplied the apartment unit's load by the number of units in the building to determine the building's total hot water load.

DOE converted daily volumetric hot water loads into daily Btu energy loads by using an equation that multiplies a building's gallons-per-day consumption of hot water by the density of water,[52] specific heat of water,[53] and the hot water temperature rise. To calculate temperature rise, DOE developed monthly dry bulb temperature estimates for each U.S. State using typical mean year (TMY) temperature data as captured in location files provided for use with the DOE EnergyPlus Energy Simulation Software.[54] Then these dry bulb temperatures were used to develop inlet water temperatures using an equation and methodology developed by the National Renewable Energy Laboratory (NREL).[55] DOE took the difference between the building's water heater setpoint temperature and inlet temperature to determine temperature rise. In addition, DOE developed building-specific Btu load adders to account for the heat losses of building types that typically use recirculation loops to distribute hot water to end uses. DOE converted daily hot water building loads (calculated for each month using monthly inlet water temperatures) to annual water heater Btu loads for use in determining annual energy use of water heaters at each efficiency level.

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[41] Heating Air-conditioning & Refrigeration Distributors International. *Heating, Air-Conditioning & Refrigeration Distributors International 2013 Profit Report.*

[42] Air Conditioning Contractors of America (ACCA). *Financial Analysis for the HVACR Contracting Industry: 2005.*

[43] U.S. Census Bureau. 2007 Economic Census Data (2007) (Available at: *http://www.census.gov/econ/*).

[44] U.S. Census Bureau. 2012 Annual Retail Trade Survey (2012) (Available at: *http://www.census.gov/retail/*).

[45] *The Sales Tax Clearing House* (2014) (Available at: *www.thestc.com/STrates.stm*) (Last accessed Feb. 7, 2014).

[46] In this case, these efficiency levels comprise combinations of thermal efficiency and standby mode performance.

[47] U.S. Department of Energy—Office of Energy Efficiency and Renewable Energy, *Commercial Prototype Building Models* (2013) (Available at: *http://www.energycodes.gov/commercial-prototype-building-models*).

[48] Such commercial building types included the following types: Small office, medium office, large office, stand-alone retail, strip mall, primary school, secondary school, outpatient healthcare, hospital, small hotel, large hotel, warehouse, quick service restaurant, and full service restaurant.

[49] U.S. Energy Information Administration (EIA). *2003 Commercial Building Energy Consumption Survey (CBECS) Data* (2003) (Available at: *http://www.eia.gov/consumption/commercial/data/2003/*).

[50] U.S. Department of Energy–Office of Energy Efficiency and Renewable Energy. Final Rule Technical Support Document: Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters (April 8, 2010) EERE-2006-STD-0129-0149 (Available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2006-STD-0129-0149*).

[51] U.S. Energy Information Administration (EIA), *2009 Residential Energy Consumption Survey (RECS) Data* (2009) (Available at: *http://www.eia.gov/consumption/residential/data/2009/*).

DOE developed a maximum hot water loads methodology for buildings using the calculations from a major water heater manufacturer's sizing calculators,[56] which were considered more comprehensive in their maximum hot water load calculations than other publicly-available sizing calculators. This methodology was applied to commercial building records in 2003 CBECS and residential building records in 2009 RECS to determine their maximum gallons-per-hour requirements, assuming a temperature rise specific to the building. DOE divided these maximum building loads by the first-hour capability of the baseline representative model of each equipment class to determine the number of water heater units required to service the maximum load. For buildings with maximum load durations of two or three hours, DOE divided maximum loads by the two- or three-hour delivery capability of the baseline representative model. For each equipment class, DOE sampled CBECS and RECS building loads in need of at least 0.9 water heaters, based on the representative model analyzed, to fulfill their maximum load requirements. Due to the maximum input capacity and storage specifications of residential-duty commercial gas-fired storage water heaters, DOE limited the buildings sample of this equipment to building records requiring four or fewer representative water heaters to fulfill maximum load since larger maximum load requirements are more likely served by larger capacity equipment. For gas-fired tankless water heaters, an adjustment factor was applied to the first-hour capability to account for the shorter time duration for sizing this equipment, given its minimal stored water volume. DOE used the modified Hunter's curve[57] for sizing of gas-fired tankless water heaters to develop the adjustment factors. Gas-fired hot water supply boilers were teamed with unfired storage tanks to determine their first-hour capabilities since this is the predominant installation approach for this equipment.

Given the hot water load requirements as well as the equipment needs of the sampled buildings, DOE was able to calculate the hours of operation to serve hot water loads and the hours of standby mode for the representative model of each equipment class to service each sampled building. Since the number of water heaters allocated to a specific building was held constant at the baseline efficiency level, a water heater's hours of operation decreased as its thermal efficiency improved. This decrease in operation, in combination with standby loss performance, led to the energy savings achieved at each efficiency level above the baseline. For storage water heaters, DOE used the standby loss levels identified in the engineering analysis to estimate energy savings from more-stringent standby loss levels. Section IV.C.3.b and Chapter 5 of the NOPR TSD include additional details on the standby loss levels analyzed in the engineering analysis.

For this NOPR, DOE also consulted the ASHRAE[58] and Electric Power Research Institute (EPRI)[59] handbooks. These resources contain data on distribution losses and maximum load requirements of different building types and applications, which were used to compare and corroborate analyses of the average and peak loads derived from the CBECS and RECS data.

In response to the proposed method of determining water heating energy use in the RFI, stakeholders expressed concerns regarding the climate zones in DOE's annual energy consumption analysis for commercial water heating equipment. In general, the commenters emphasized the importance of appropriately sizing the equipment under analysis for water heating energy use. A.O. Smith commented that "analysis across climate zones is unnecessary except for air-source HPWH's, as incoming water temperature is a more determinate parameter for other technology classes." (A.O. Smith, No. 2 at p. 3) Along the same lines, AHRI commented that it was overly complicated to have the proposed annual energy consumption analysis consider a range of applications of building types and climate zones. According to AHRI, the analysis should assume that the water heating equipment had been sized to meet the building load, regardless of building type or location. (AHRI, No. 5 at p. 4) In addition, Bradford White commented that the approach of the Energy Use Analysis was too involved and needed to be simplified. (Bradford White, No. 3 at p. 2) AHRI also commented that DOE could use manufacturers' sizing tools to size water heaters to the right application. (AHRI, No. 5, at pp. 4–5) AHRI cautioned that sizing methods are different than overall usage profiles. (AHRI, No. 5 at pp. 4–5) Rheem Manufacturing Company commented that commercial water heating equipment should be sized to meet the building's peak demand. (Rheem, No. 10 at p. 5) Lastly, Steffes recommended that DOE should use RECS 2009 in its analysis (particularly Table CE4.6). (Steffes, No. 6 at p. 2)

In the October 2014 RFI, DOE sought input and sources of data or recommendations for tools to support sizing of CWH equipment typically found in commercial and residential applications. 79 FR 62899, 62907 (Oct. 21, 2014). In response, Rheem Manufacturing Company commented that it had an online tool for projecting hot water demand, found online at *http://www.rheem.com/certispec.* (Rheem, No. 10 at p. 5) A.O. Smith responded that most manufacturers, including A.O. Smith, have sizing calculators on their Web site, citing its own sizing calculators at *http://www.hotwatersizing.com* and *http://www.lochinvar.com/sizingguide.aspx.* (A.O. Smith, No. 2 at p. 3) Bradford White commented that its Web site had the RightSpec® Product Sizing Guide to size water heating systems to commercial applications. (Bradford White, No. 3 at p. 3)

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[52] DOE used 8.29 gallons per pound.

[53] DOE used 1.000743 Btu per pound per degree Fahrenheit.

[54] U.S. Department of Energy—Office of Energy Efficiency and Renewable Energy. *EnergyPlus Energy Simulation Software,* TMY3 data (Available at: *http://apps1.eere.energy.gov/buildings/energyplus/cfm/weather_data3.cfm/region=4_north_and_central_america_wmo_region_4/country=1_usa/cname=USA*) (Last accessed October 2014).

[55] Hendron, R., *Building America Research Benchmark Definition, Updated December 15, 2006* (January 2007) National Renewable Energy Laboratory: Golden, CO. Report No. TP–550–40968 (Available at: *http://www.nrel.gov/docs/fy07osti/40968.pdf*).

[56] A.O. Smith, *Pro-Size Water Heater Sizing Program* (Available at: *http://www.hotwatersizing.com/*) (Last accessed in March 2015).

[57] PVI Industries Inc., "Water Heater Sizing Guide for Engineers," Section X, pp 18–19 (Available at: *http://sizing.pvi.com/PV592%20Sizing%20Guide%2011-2011.pdf*).

[58] American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE), *ASHRAE Handbook of HVAC Applications: Chapter 50 (Service Water Heating)* (2011) pp. 50.1–50.32 (Available at: *https://www.ashrae.org/resources-publications/handbook*).

[59] Electric Power Research Institute (EPRI), *Commercial Water Heating Applications Handbook* (1992) Electric Power Research Institute: Palo Alto, CA. Report No. TR–100212 (Available at: *http://www.epri.com/abstracts/Pages/ProductAbstract.aspx?ProductId=TR-100212*).

DOE considered these comments in designing its energy use analysis. As recommended by Steffes, DOE utilized 2009 RECS building characteristics data for determining residential building hot water loads and maximum load sizing requirements. DOE also used 2003 CBECS building characteristics data for determining commercial building hot water loads and maximum load sizing requirements. While recognizing AHRI and Bradford White's concern for the complexity of the analysis, DOE determined that assessing the energy use of CWH equipment across a range of operating applications and climates specific to the building types and locations in the 2009 RECS and 2003 CBECS data improves the estimated hot water load associated with equipment sized for the applications. This analytical approach enables DOE to evaluate the impacts of the proposed energy conservation standards comprehensively, accounting for the hot water requirements of U.S. commercial consumers across a multitude of scenarios.

A.O. Smith and AHRI expressed concerns about analyzing the energy use of CWH equipment across climate zones. Based on the comment received, DOE believes that this concern was unfounded. As discussed previously, DOE's analysis utilized climate zone data, in the form of location-based dry bulb temperature data, which was then used to estimate the inlet water temperature specific to each sampled building's location, a key parameter identified by A.O. Smith. This approach captured the effect of inlet water temperature on CWH equipment hot water loads and maximum load sizing. As recommended by AHRI, Rheem, A.O. Smith, and Bradford White, DOE used a major manufacturer's peak sizing calculators as the basis for sizing CWH equipment to the maximum hot water loads predicted for the sampled CBECS and RECS building records.

For details of DOE's energy use analysis, see chapter 7 of the NOPR TSD.

F. Life-Cycle Cost and Payback Period Analysis

The purpose of the LCC and PBP analysis is to analyze the effects of potential amended energy conservation standards on commercial consumers of CWH equipment by determining how a potential amended standard affects their operating expenses (usually decreased) and their total installed costs (usually increased). DOE used the following two metrics to measure commercial consumer impacts:

- The LCC (life-cycle cost) is the total consumer cost of an appliance or equipment over the life of the equipment. The LCC calculation includes total installed cost (equipment manufacturer selling price, distribution chain markups, sales tax, and installation costs), operating costs (energy, repair, and maintenance costs), product lifetime, and discount rate. DOE discounts future operating costs to the time of the purchase using a commercial consumer discount rate.
- The PBP (payback period) is the estimated amount of time (in years) it takes commercial consumers to recover the increased total installed cost (including equipment and installation costs) of a more-efficient type of equipment through reduced operating costs. DOE calculates the PBP by dividing the change in total installed cost (normally higher) due to a proposed new or amended energy conservation standard by the change in annual operating cost (normally lower) that results from that potential standard. For a given efficiency level, DOE measures the change in LCC, or the LCC savings, relative to an estimate of the no-new-standards-case efficiency level. The no-new-standards-case estimates reflect the market in the absence of amended energy conservation standards, including market trends for equipment that exceed the current energy conservation standards.

For the NOPR, DOE analyzed the potential for variability by performing the LCC and PBP calculations on a nationally representative sample of individual commercial and residential buildings. DOE utilized the sample of buildings developed for the energy use analysis and the corresponding simulations results.[60] DOE expressed the LCC and PBP results on a single, per-unit, commercial water heating equipment basis, considered at each thermal efficiency and standby loss level. In addition, DOE reported the LCC results as the percentage of CWH equipment consumers experiencing differing economic impacts (LCC savings of greater than 0 indicate net benefit; LCC savings of less than 0 indicate net cost; and LCC savings equal to 0 indicate no impact).

DOE modeled uncertainty for specific inputs to the LCC and PBP analysis by using Monte Carlo simulation coupled with the corresponding probability distributions, including distributions describing efficiency of units shipped in the no-new-standards case. The Monte Carlo simulations, performed by Crystal Ball (a commercially-available software program), randomly sampled input values from each of the probability distributions. Then, the model calculated the LCC and PBP for equipment at each efficiency level for the 10,000 simulations. More details on the incorporation of uncertainty and variability in the LCC are available in appendix 8B of the NOPR TSD.

DOE conducted the LCC and PBP analyses using a commercially-available spreadsheet tool and a purpose-built spreadsheet model, available on DOE's Web site.[61] This spreadsheet model developed by DOE accounts for variability in energy use and prices, installation costs, repair and maintenance costs, and energy costs. As a result, the LCC results are displayed as distributions of impacts compared to the no-new-standards case (without amended standards) conditions. The results of DOE's LCC and PBP analysis are summarized in section V.B and described in detail in chapter 8 of the NOPR TSD.

EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and, as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the test procedure in place for that standard. For each considered efficiency level, DOE typically determines the value of the first year's energy savings,[62] and multiplies that amount by the average energy price forecast for the year in which compliance with the amended standards would be required. This value, in conjunction with equipment cost, was used in a rebuttable payback calculation for each equipment class.

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[60] DOE utilized the building types defined in CBECS 2003, as well as residential buildings defined in RECS 2009. More information on the types of buildings considered is discussed later in this section. (CBECS: *http://www.eia.gov/consumption/commercial/data/2003/*) (RECS: *http://www.eia.gov/consumption/residential/*) (Both links last accessed on 04/06/2015).

[61] DOE's Web page for commercial water heating equipment is available at: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=36.*

DOE calculated the LCC and PBP for all commercial consumers as if each would purchase a new CWH unit in the year that compliance with amended standards is required. As discussed above, DOE is conducting this rulemaking pursuant to its 6-year-lookback authority under 42 U.S.C. 6313(a)(6)(C), and EPCA directs DOE to publish a final rule amending the standard for the equipment covered in this document no later than 2 years after a NOPR is issued. (42 U.S.C. 6313(a)(6)(C)(iii)) At the time of preparation of the NOPR analyses, the expected issuance date was 2015, leading to an anticipated final rule publication in 2016. EPCA also states that amended standards prescribed under this subsection shall apply to equipment manufactured after a date that is later of: (I) The date that is 3 years after publication of the final rule establishing a new standard; or (II) the date that is 6 years after the effective date of the current standard for a covered equipment. (42 U.S.C. 6313(a)(6)(C)(iv)) The date under clause (I), currently projected to be 2019, is later than the date under clause (II), which is 2009. Therefore, for the purposes of its analysis for this NOPR, DOE used January 1, 2019 as the beginning of compliance with potential amended standards for CWH equipment.

As noted above, DOE's LCC and PBP analyses generate values that calculate the PBP for commercial consumers of potential energy conservation standards, which includes, but is not limited to, the 3-year PBP contemplated under the rebuttable presumption test. However, DOE routinely conducts a full economic analysis that considers the full range of impacts, including those to the consumer, manufacturer, Nation, and environment, as required under 42 U.S.C. 6313(a)(6)(ii). The results of this analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification).

In the October 2014 RFI, DOE requested comment from stakeholders on the overall method that it intended to use in conducting the LCC and PBP analysis for CWH equipment. 79 FR 62899, 62907 (Oct. 21, 2014). In response to this request, several stakeholders provided comment. A. O. Smith and Rheem stated that the LCC and PBP methods were acceptable but were dependent upon accurate assumptions and data. (A. O. Smith, No. 2 at p. 3; Rheem, No. 10 at p. 6) AHRI agreed, and mentioned potential issues in selecting the inputs for the analysis. (AHRI, No. 5 at p. 4) Bradford White further stated that while it had no issue with the proposed method for the LCC and PBP analyses, it would like representative cost estimates to be used. (Bradford White, No. 3 at p. 3)

1. Approach

Recognizing that each business that uses CWH equipment is unique, DOE analyzed variability and uncertainty by performing the LCC and PBP calculations on a nationally representative stock of commercial and residential buildings. Commercial buildings can be categorized based on their specific activity, and DOE considered commercial buildings such as offices (small, medium, and large), stand-alone retail and strip-malls, schools (primary and secondary), hospitals and outpatient healthcare facilities, hotels (small and large), warehouses, restaurants (quick service and full service), assemblies, nursing homes, and dormitories. These encompass 89.1 percent of the total sample of commercial building stock in the United States. The residential buildings can be categorized based on the type of housing unit, and DOE considered single-family (attached and detached) and multi-family (with 2–4 units and 5+ units) buildings in its analysis. This encompassed 95.5 percent of the total sample of residential building stock in the United States, though not all of this sample would use CWH equipment. DOE developed financial data appropriate for the commercial consumers in each business and building type. Each type of building has typical commercial consumers who have different costs of financing because of the nature of the business. DOE derived the financing costs based on data from the Damodaran Online Web site.[63] For residential applications, the entire population was categorized into six income bins, and DOE developed the probability distribution of real interest rates for each income bin by using data from the Federal Reserve Board's Survey of Consumer Finances.[64]

The LCC analysis used the estimated annual energy use for every unit of CWH equipment described in section IV.C. Aside from energy use, other important factors influencing the LCC and PBP analyses are energy prices, installation costs, and equipment distribution markups. At the national level, the LCC spreadsheets explicitly model both the uncertainty and the variability in the model's inputs, using probability distribution functions.

As mentioned earlier, DOE generated LCC and PBP results for commercial consumers using business type data aligned with building type and by geographic location, and DOE developed weighting factors to generate national average LCC savings and PBPs for each efficiency level. As there is a unique LCC and PBP for each calculated combination of building type and geographic location, the outcomes of the analysis can also be expressed as probability distributions with a range of LCC and PBP results. A distinct advantage of this type of approach is that DOE can identify the percentage of commercial consumers achieving LCC savings or attaining certain PBP values due to an increased efficiency level, in addition to the average LCC savings or average PBP for that efficiency level.

2. Life-Cycle Cost Inputs

For each efficiency level that DOE analyzed, the LCC analysis required input data for the total installed cost of the equipment, its operating cost, and the discount rate. Table IV.27 summarizes the inputs and key assumptions DOE used to calculate the commercial consumer economic impacts of all energy efficiency levels analyzed in this rulemaking. A more detailed discussion of the inputs follows.

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[62] The DOE test procedure for commercial water heating equipment at 10 CFR 431.106 does not specify a calculation method for determining energy use. For the rebuttable presumption PBP calculation, DOE used average energy use estimates.

[63] *Damodaran Online* (Commercial Applications) (Available at: *http://pages.stern.nyu.edu/~adamodar/New_Home_Page/home.htm*) (Last accessed on 04/04/2015).

[64] The real interest rates data for the six income groups (residential sector) can be obtained from the Survey of Consumer Finances. The Federal Reserve Board. *Survey of Consumer Finances.* 1989, 1992, 1995, 1998, 2001, 2004, 2007, 2010 (Available at: *http://www.federalreserve.gov/pubs/oss/oss2/scfindex.html*). Survey of Consumer Finances (Estimate using 1995, 1998, 2001, 2004, 2007, and 2010 databases) (Residential Applications) (Available at: *http://www.federalreserve.gov/econresdata/scf/aboutscf.htm*) (Last accessed on May 14, 2015).

TABLE IV.27—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES

Inputs	Description
Affecting Installed Costs	
Equipment Price	Equipment price derived by multiplying manufacturer sales price or MSP (calculated in the engineering analysis) by distribution channel markups, as needed, plus sales tax from the markups analysis.
Installation Cost	Installation cost includes installation labor, installer overhead, and any miscellaneous materials and parts, derived principally from RS Means 2015 data books[a][b][c] and converted to 2014$.
Affecting Operating Costs	
Annual Energy Use	Annual unit energy consumption for each class of equipment at each efficiency and standby loss level estimated at different locations and by building type using building-specific load models and a population-based mapping of climate locations. The geographic scale used for commercial and residential applications are Census Divisions and reportable domains respectively.
Electricity Prices, Natural Gas Prices, and Oil Prices.	DOE developed average residential and commercial electricity prices based on EIA Form 861 data for 2013.[d] Future electricity prices are projected based on *AEO 2015.* DOE developed residential and commercial natural gas prices based on EIA State-level prices in EIA *Natural Gas Navigator.*[e] Future natural gas prices are projected based on *AEO 2015.*
Maintenance Cost	Annual maintenance cost did not vary as a function of efficiency.
Repair Cost	DOE determined that the materials portion of the repair costs for gas-fired equipment changes with the efficiency level for products. The different combustion systems varied among different efficiency levels, which eventually led to different repair costs.
Affecting Present Value of Annual Operating Cost Savings	
Equipment Lifetime	Table IV.29 provides lifetime estimates for equipment class. DOE estimated that the average CWH equipment lifetimes range between 10 and 25 years, with the average lifespan dependent on equipment class based on estimates cited in available literature.[g][h]
Discount Rate	Mean real discount rates (weighted) for all buildings range from 3.6% to 5.1%, for the six income bins relevant to residential applications. For commercial applications, DOE considered mean real discount rates (weighted) from ten different commercial sectors, and the rates ranged between 3.5% and 6%.
Analysis Start Year	Start year for LCC is 2019, which is the anticipated compliance date for any potential amended standards if adopted by a final rule of this rulemaking.
Analyzed Efficiency Levels	
Analyzed Efficiency Levels	DOE analyzed baseline efficiency levels and up to five higher thermal efficiency levels. DOE also analyzed baseline and up to three higher efficiency standby loss levels. See the engineering analysis for additional details on selections of efficiency levels and costs.

[a] RSMeans, *RSMeans Building Construction Cost Data 2015,* 73rd ed. (2014) (Available at: *http://www.rsmeans.com*).

[b] RSMeans, *RSMeans Contractor's Pricing Guide Residential Repair & Remodeling Costs 2015* (2014) (Available at: *http://www.rsmeans.com*).

[c] RSMeans, *RSMeans Mechanical Cost Data 2015.* 38th Annual ed. (2014) (Available at: *www.rsmeans.com*).

[d] U.S. Energy Information Administration (EIA), Electric Sales, Revenue, and Average Price 2013: Select table Sales and Revenue Data by State, Monthly Back to 1990 (Form EIA–826) (Available at: *http://www.eia.gov/cneaf/electricity/page/sales_revenue.xls*) (Last accessed on 04/04/2015).

[e] U.S. Energy Information Administration (EIA), Average Price of Natural Gas Sold to Commercial Consumers—by State (Available at: *http://www.eia.gov/dnav/ng/ng_pri_sum_a_EPG0_PCS_DMcf_a.htm*) (Last accessed on 04/04/2015).

[f] U.S. Energy Information Administration (EIA), State Energy Data System (SEDS) (Available at: *http://www.eia.gov/state/seds/*) (Last accessed 04/04/2015).

[g] American Society of Heating, Refrigerating, and Air-Conditioning Engineers, *2011 ASHRAE Handbook: Heating, Ventilating, and Air-Conditioning Applications* (2011) (Available at: *https://www.ashrae.org/resources-publications*).

[h] Abramson, B., D. Herman, and L. Wong, *Interactive Web-based Owning and Operating Cost Database* (2005) Final Report ASHRAE Research Project RP–1237 (Available at: *https://www.ashrae.org/resources-publications*).

a. Equipment Prices

The price of CWH equipment reflects the application of distribution channel markups (mechanical contractor markups) and sales tax to the MSP, which is the cost established in the engineering analysis. As described in section IV.D, DOE determined distribution channel costs and markups for commercial water heating equipment. For each equipment class, the engineering analysis provided contractor costs for the baseline equipment and up to five higher equipment efficiencies. DOE examined whether equipment prices for CWH equipment would change over time. DOE tentatively determined that there is no clear historical price trend for CWH equipment. Therefore, DOE used costs established in the engineering analysis directly for determining 2019 equipment prices and future equipment prices (equipment is purchased by the commercial consumer during the first year in 2019 at the estimated equipment price, after which the equipment price remains constant). See section IV.H.3 of this document and appendix 10B of the NOPR TSD for more details.

The markup is the percentage increase in price as the CWH equipment passes through distribution channels. As explained in section IV.D, CWH equipment is assumed to be delivered by the manufacturer through a variety of distribution channels. There are several distribution pathways that involve different combinations of the costs and markups of commercial water heating equipment. The overall markups used in the LCC analysis are weighted averages of all of the relevant distribution channel markups.

UM was concerned that this rulemaking would quickly drive up the cost of water heaters without addressing the inefficiencies of related systems. (UM, No. 9 at p. 2) In response, DOE does address the inefficiencies of building systems, including water heating systems, through its Building Energy Codes Program. However, the present CWH rulemaking is initiated as part of the Appliances and Equipment Standards Program, and through this program, DOE can only set equipment standards that are technologically feasible and economically justified, but does not address other inefficiencies found in building systems.

b. Installation Costs

The primary inputs for establishing the total installed cost are the baseline commercial consumer price, standard-level commercial consumer price increases, and installation costs (labor and material costs), where the primary installation costs changes, by efficiency level, are the venting costs for high-efficiency gas-fired products. Baseline commercial consumer prices and standard-level commercial consumer price increases will be determined by applying markups to manufacturer selling price estimates, including sales tax where appropriate. For new installations, the installation cost is added to the commercial consumer price to arrive at a total installed cost. For replacement installations, the cost to remove the previous equipment (including venting when necessary) and the installation cost for new equipment are added to the commercial consumer price to arrive at the total replacement installation cost.

In the October 2014 RFI, DOE stated that it intended to develop installation costs using the most recent RS Means data.[65] [66] [67] [68] [69] 79 FR 62899, 62907 (Oct. 21, 2014). In addition, DOE sought inputs on its approach of using RS Means to develop installation costs. *Id.* Several stakeholders commented on the data sources for the installation cost analysis. AHRI commented that it was not familiar enough with the development process of the RS Means Mechanical Cost Data to be confident in its accuracy. (AHRI, No. 5 at p. 5) A. O. Smith also commented that it was not familiar enough with the development process of the RS Means Mechanical Cost Data to be confident in its accuracy. (A. O. Smith, No. 2 at p. 3) Rheem opined that RS Means Mechanical Cost Data was not appropriate for LCC and PBP analysis. Rheem commented that installation cost was a function of fuel input, and replacement installation was double the cost of new construction installation. (Rheem, No. 10 at p. 6)

To summarize DOE's approach, DOE derived national average installation costs for commercial equipment from data provided in RS Means 2015 data books.[70] RS Means provides estimates for installation costs for CWH units by equipment capacity, as well as cost indices that reflect the variation in installation costs for 295 cities in the United States. The RS Means data identify several cities in all 50 States and the District of Columbia. DOE incorporated location-based cost indices into the analysis to capture variation in installation costs, depending on the location of the commercial consumer. Based upon the RS Means data, relationships were developed for each product subcategory to relate the amount of labor to the size of the product—either the storage volume or the input rate. In response to the comments received, DOE compared the RS Means data to other publically-available sources of similar national information, specifically Engineering News-Record (ENR)[71] and Whitestone Research.[72] Specifically, this approach was intended to address the concerns of Joint Advocates, as no independent calibration of the RS Means data was readily available. (Joint Advocates, No. 7 at p. 4) Generally, the RS Means data were found to be in agreement with other national sources. In certain specific instances when the RS Means data were found to be significantly higher than the average, DOE scaled the RS means relationship to represent the average of the available data sources. In the specific cases where the modeled labor hours resulted in excessive amounts of time in a given day, the number of laborers in the crew was increased by one person, while the labor hour calculations were reduced by a factor. This approach is in agreement with Rheem's comment that the water heater is a critical building component and will be repaired or replaced quickly to maintain operation of the building. (Rheem, No. 10 at p. 7) As none of the received comments identified alternative sources of data, and with this comparison complete, DOE confirms the RS Means data to be sufficient for this analysis.

For products requiring venting, DOE calculated venting costs for each building in the Commercial Building Energy Consumption Survey (CBECS) and Residential Energy Consumption Survey (RECS). A variety of installation parameters impact venting costs; among these, DOE simulated the type of installation (new construction or retrofit), draft type (atmospheric venting or power venting), water heater fuel type, building vintage, number of stories, and presence of a chimney. A logic sequence was applied to the identified variables in order to accurately determine the venting costs for each instance of equipment and building within the Monte Carlo analysis. The primary assumptions used in this logic are listed below:

- 25 percent of commercial buildings built prior to 1980 were assumed to have a masonry chimney, and 25 percent of masonry chimneys required relining.
- Condensing products with vent diameters smaller than 5 inches were modeled using PVC (polyvinyl chloride) as the vent material.
- Condensing products with vent diameters larger than 8 inches were modeled using AL29–4C as the vent material.
- Condensing products with vent diameters of 5 inches and up to and including 8 inches were modeled using a random selection process where on average 50 percent of installations use PVC as the vent material and the remaining use AL29–4C.
- 5 percent of all condensing water heater installations were modeled as direct vent installations, where flue lengths would allow. The intake air pipe material for condensing products was modeled as PVC.

Additional details of the venting logic sequence can be found in Chapter 8 of the NOPR TSD. In addition, total installed costs can be found below in tables V.4, V.6, V.8, V.10, and V.14.

Issue 19: DOE seeks comment on the assumptions used in determining the venting costs for the relevant types of CWH equipment.

Issue 20: DOE seeks comment on the percentage of installations using polypropylene venting materials in this industry and any limitations such venting has as to maximum available diameters or other limitations.

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[65] RSMeans, RSMeans Building Construction Cost Data 2015. 73rd ed. (2014) (Available at: *http://www.rsmeans.com*).

[66] RSMeans, RSMeans Contractor's Pricing Guide Residential Repair & Remodeling Costs 2015 (2014) (Available at: *http://www.rsmeans.com*).

[67] RSMeans, RSMeans Mechanical Cost Data 2015. 38th Annual ed. (2014) (Available at: *http://www.rsmeans.com*).

[68] RSMeans, RSMeans Electrical Cost Data 2015. 38th Annual ed. (2014) (Available at: *http://www.rsmeans.com*).

[69] RSMeans, RSMeans Plumbing Cost Data 2015. 38th Annual ed. (2014) (Available at: *http://www.rsmeans.com*).

[70] DOE notes that RS Means publishes data books in one year for use the following year; hence, the 2015 data book was published in 2014.

[71] Engineering News-Record, *Mechanical Contracting Costbook 2015 Edition,* Volume 8 (2014). McGraw-Hill Publishing Company, Inc.: New York, NY.

[72] Whitestone Research, *The Whitestone Facility Maintenance and Repair Cost Reference 2012–2013,* 17th Annual ed. (2012) Whitestone Research: Santa Barbara, CA.

DOE recognized that basic installation costs are higher for larger units, but did not identify any significant basic installation cost increases for higher-efficiency CWH equipment. These relationships were consistent in the RS Means data. Therefore, DOE utilized RS Means installation cost data to derive installation cost curves by equipment size. As the data sources available to DOE did not have data to calibrate the extent to which installation costs might change as efficiency increased, DOE assumed for the NOPR LCC analysis that basic installation cost would not increase as a function of increased efficiency.

Rheem argued that the labor cost to remove a product was equal to the labor cost to install an identical appliance. (Rheem, No. 10 at p. 7) Determination of the amount of labor was expected to be either a constant percentage based upon the installation cost, as suggested by Rheem, or a linear relationship of the percentage of the installation cost related to the volume of the tank in question. However, inspection of the available RS Means data demonstrated that the labor required for removing a storage tank smaller than approximately 250 gallons required approximately 20 percent of the labor necessary to complete the installation. The percentage of labor required for removal, compared to the labor required for installation, continued to increase with the storage volume until it reached approximately 54 percent of installation labor at a volume of 1,200 gallons. This relationship was observed to be non-linear in nature, which would significantly complicate the analysis, and did not agree with stakeholder feedback or DOE's understanding of the costs.

Therefore, DOE estimated the labor required to remove CWH equipment by averaging the calculated percentage of labor to remove a water heater compared to the amount of labor required to install the water heater with respect to the storage volume. As reported in RS Means data, the average percentage of removal labor hours in terms of installation labor hours was found to be 37.5 percent of the labor to install a water heater, and this percentage was used to determine the amount of labor required to remove a given unit of CWH equipment at the end of service condition.

DOE did not find a source of data on the cost for venting system removal. However, DOE understands that removal of venting requires many similar tasks in handling components as installation does, but without the same necessary care to ensure vent integrity. As found in the equipment removal cost, the amount of labor required for removing venting is less than the amount of labor required to install said venting. Furthermore, DOE notes that the amount of labor required for removal of the venting will increase significantly as the venting diameter increases due to the difficulty of managing the components during removal. Therefore, DOE modeled the labor required to remove an existing venting system as 50 percent of the labor required to complete an installation of a new venting system, as this presents a conservative estimate of the amount of labor required for removal.

Issue 21: DOE seeks comment on the installation labor and labor to remove equipment and venting in this analysis.

Issue 22: DOE seeks comment on the overall installed costs by TSL for each equipment class as shown in the Average LCC and PBP Results tables found in section V.B.1.a, Table V.4 through Table V.14.

c. Annual Energy Use

DOE estimated the annual electricity and natural gas consumed by each class of CWH equipment, by efficiency and standby loss level, based on the energy use analysis described in section IV.E and in chapter 7 of the NOPR TSD.

d. Electricity and Natural Gas Prices

Electricity and natural gas prices are used to convert changes in the energy consumption from higher-efficiency equipment into energy cost savings. It is important to consider regional differences in electricity and natural gas prices, because the variation in those prices can impact electricity and natural gas consumption savings and equipment costs across the country. DOE determined average effective commercial electricity prices[73] and commercial natural gas prices[74] at the State level from Energy Information Administration (EIA) data for 2014. DOE used data from EIA's Form 861[75] to calculate commercial and residential sector electricity prices, and EIA's Natural Gas Navigator[76] to calculate commercial and residential sector natural gas prices. Future energy prices were projected using trends from the EIA's *AEO 2015*.[77] This approach captured a wide range of commercial electricity and natural gas prices across the United States.

CBECS and RECS report data based on different geographic scales. The various States in the United States are aggregated into different geographic scales such as Census Divisions (for CBECS) and reportable domains (for RECS). Hence, DOE weighted electricity and natural gas prices in each State based on the cumulative population in the cluster of one or more States that comprise each Census Division or reportable domain respectively. See chapter 8 of the NOPR TSD for further details.

The electricity and natural gas price trends provide the relative change in electricity and natural gas costs for future years. DOE used the *AEO 2015* Reference case to provide the default electricity and natural gas price forecast scenarios. DOE extrapolated the trend in values at the Census Division level to establish prices beyond 2040.

Several stakeholders suggested further items to consider for the electricity and gas price analysis. Steffes stated that using average electric rates where demand and energy charges were bundled together in LCC and PBP calculations would often fail to capture financial impact. (Steffes, No. 6 at p. 2) Bradford White recommended that DOE reach out to the Energy Solutions Center for natural gas pricing. (Bradford White, No. 3 at p. 3) AGA recommended that DOE use marginal gas-price analysis when evaluating monetary savings in the LCC, arguing that a shift from a non-condensing water heater to a condensing water heater would not alter fixed costs. (AGA, No. 4 at p. 5) DOE considered each of these comments carefully, and in response, developed the LCC analysis using a marginal fuel price approach to convert fuel savings into corresponding financial benefits for the different equipment classes. This approach was based on the development of marginal price factors for gas and electric fuels based on historical data relating monthly expenditures and consumption. For details of DOE's marginal fuel price approach, see chapter 8 of the NOPR TSD.

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[73] U.S. Energy Information Administration (EIA), Form EIA–826 Database Monthly Electric Utility Sales and Revenue Data (EIA–826 Sales and Revenue Spreadsheets) (Available at: *http://www.eia.gov/electricity/data/eia826/* On the right side of the screen under Aggregated, select 1990–current). (Last accessed on 04/04/2015.)

[74] U.S. Energy Information Administration (EIA), Natural Gas Prices (Available at: *http://www.eia.gov/dnav/ng/ng_pri_sum_a_EPG0_PCS_DMcf_a.htm*) (Last accessed on 04/04/2015).

[75] U.S. Energy Information Administration (EIA), Survey form EIA–861—Annual Electric Power Industry Report (Available at: *http://www.eia.gov/electricity/data/eia861/index.html*) (Last accessed on 04/04/2015).

[76] U.S. Energy Information Administration (EIA), Natural Gas Navigator (Available at: *http://tonto.eia.doe.gov/dnav/ng/ng_pri_sum_dcu_nus_m.htm*) (Last accessed on 04/04/2015).

[77] U.S. Energy Information Administration (EIA), *2015 Annual Energy Outlook* (2015) Full report. DOE/EIA–0383(2015) (Available at: *http://www.eia.gov/forecasts/aeo/*) (Last accessed on 04/04/2015).

e. Maintenance Costs

Maintenance costs are the routine annual costs to the commercial consumer of ensuring continued equipment operation. DOE utilized The Whitestone Facility Maintenance and Repair Cost Reference 2012–2013[78] to determine the amount of labor and material costs required for maintenance of each of the relevant CWH equipment subcategories. Maintenance costs include services such as cleaning the burner and flue and changing anodes. DOE estimated average annual routine maintenance costs for each class of CWH equipment based on equipment groupings. Table IV.28 presents various maintenance services identified and the amount of labor required to service each equipment class in this analysis.

TABLE IV.28—SUMMARY OF MAINTENANCE LABOR HOURS AND SCHEDULE USED IN THE LCC AND PBP ANALYSES

Equipment class	Description	Labor hours	Frequency years
Commercial gas-fired storage water heaters/Residential-duty gas-fired storage water heaters.	Clean (Volume ≤275 gallons)	2.67	1
	Clean (Volume >275 gallons)	8	2
	Overhaul	1.84	5
Gas-fired instantaneous water heaters and hot water supply boilers.	Service	0.33	1
Electric storage water heaters	Check	0.33	3
	Drain & Flush (Volume ≤30 gallons)	2.67	7
	Drain & Flush (Volume >30 gallons)	4	7

Because data were not available to indicate how maintenance costs vary with equipment efficiency, DOE used preventive maintenance costs that remain constant as equipment efficiency increases. Additional information relating to maintenance of CWH equipment can be found in Chapter 8 of the TSD.

Issue 23: DOE seeks comment on maintenance labor estimates used in the LCC analysis and the assumption that maintenance costs remain constant as efficiency increases.

f. Repair Costs

The repair cost is the cost to the commercial consumer of replacing or repairing components that have failed in the CWH equipment.

In the October 2014 RFI, DOE sought input on its intention to use the most recent RS Means Facilities Maintenance & Repair Cost data for developing maintenance costs. 79 FR 62899, 62908 (Oct. 21, 2014). Joint Advocates stated they were not aware of studies with independent calibration of RS Means Facilities Maintenance & Repair Cost data and suggested that DOE could survey a metropolitan area to perform such a calibration. (Joint Advocates, No. 7 at p. 4) Rheem commented that RS Means Facilities Maintenance & Repair Cost data presented best practices but stated that there are a wide range of practices in the field. (Rheem, No. 10 at p. 7) A.O. Smith and AHRI commented that each was not familiar enough with the development process of the RS Means Facilities Maintenance & Repair Cost Data to be confident in its accuracy. (A.O. Smith, No. 2 at p. 4; AHRI, No. 5 at p. 5)

In response to these comments, DOE conducted further research to identify alternative sources of data relating to the repair of CWH equipment and identified The Whitestone Facility Maintenance and Repair Cost Reference 2012–2013[79] as an alternative source of information. Upon evaluation of the Whitestone Research data, and in consideration of the comments received, DOE adopted a simplified analysis for repairs. Specifically, although the Weibull probability distribution may be utilized, Joint Advocates and Rheem consider this approach to generalize equipment failure rates, and hence maintenance rates, across environmental conditions, installation variations, design approaches, and manufacturing processes which have changed with time. (Joint Advocates, No. 7 at p. 4; Rheem, No. 10 at p. 8) As an alternative to Weibull probability distribution, for this aspect of the analysis, DOE calculated repair costs based on an assumed typical product level failure rate of 2 percent per year, with an additional assumption of an average of five components that are field replaceable during the equipment's lifetime. These assumptions equate to a component failure rate of 0.4 percent of shipments per year. This repair rate extends through the life of the equipment.

The labor required to replace a component was estimated as 2 hours for combustion systems, 1 hour for combustion controls, and ¾ hour to replace an electric water heater thermostat. The Department estimates that a service technician would require 3 hours on average to replace an electric heating element, accounting for the time required to drain a storage tank prior to element replacement and refilling the tank afterwards.

In the October 2014 RFI, DOE asked if repair costs vary as a function of equipment efficiency. 79 FR 62899, 62908 (Oct. 21, 2014). Several stakeholders commented on the relationship between equipment efficiency and repair costs. Bradford White, A.O. Smith, and AHRI commented that to the extent that higher-efficiency equipment incorporates additional components and more complex controls, the repair costs would likely be higher. (Bradford White, No. 3 at p. 3; A.O. Smith, No. 2 at p. 4; AHRI, No. 5 at p. 5) Along the same line, Rheem stated that repair costs could be greater for new, more-efficient technologies. These repairs were more frequent, required more labor hours, and had parts that were less likely to be available and may require the cost of premium freight. (Rheem, No. 10 at p. 7)

DOE considered the feedback from the stakeholders and undertook further research to identify components and subsystems commonly replaced in order to evaluate differences in repair costs relative to efficiency levels.

The combustion systems and controls used in gas-fired CWH equipment were found to have different costs related to the efficiency levels of these products. This is in agreement with comments provided by AHRI, Bradford White,

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[78] Whitestone Research, The Whitestone Facility Maintenance and Repair Cost Reference 2012–2013 (17th Annual ed. 2012) Whitestone Research: Santa Barbara, CA.

[79] The Whitestone Facility Maintenance and Repair Cost Reference 2012–2013, 17th Annual ed. (2012) Whitestone Research: Santa Barbara, CA (Whitestone Research) (Available at: *http://whitestoneresearch.com/CBRE-Store/Books.html*).

Rheem, and A.O. Smith (AHRI, No. 5 at p. 5; Bradford White, No. 3 at p. 3; Rheem, No. 10 at p. 7; A.O. Smith, No. 2 at p. 4). For the combustion systems, these differences relate predominately to atmospheric combustion, powered atmospheric combustion, and pre-mixed modulating combustion systems used on baseline-efficiency, moderate-efficiency, and high-efficiency products respectively. The control systems employed on atmospheric combustion systems were found to be significantly less expensive than the controller used on powered combustion systems, which was observed to include a microprocessor in some products.

A simpler analysis was used to account for repair costs in the LCC model for electric water heaters. Component costs used in repairs were taken from average prices found on manufacturers' Web sites, Grainger.com, and Internet searches.

The repair cost of equipment with multiple service parts was estimated as the average cost of all of the components identified in the Internet search. This cost was applied at the frequency identified earlier in this section. DOE understands that this approach may conservatively estimate the total cost of repair for purposes of DOE's analysis, but the percentage of total repair cost remains small compared to the commercial consumer price and the total installation price. Additionally, DOE prefers to use this component level approach to understand the incremental repair cost difference between efficiency levels of equipment. Additional details of this analysis are found in Chapter 8 of the NOPR TSD and Appendix 8E of the NOPR TSD.

Issue 24: DOE seeks comment on the findings of the repair costs of CWH equipment, labor estimates for repairs, and the estimated rate of component repair.

g. Equipment Lifetime

Equipment lifetime is the age when a unit of CWH equipment is retired from service. In the October 2014 RFI, DOE presented various sources that estimate the average lifetime for CWH equipment to be between 7 and 25 years based on the application and equipment class. 79 FR 62899, 62908 (Oct. 21, 2014). In addition, DOE stated in the October 2014 RFI that it intended to determine average lifetime for each CWH equipment class as the primary input for developing a Weibull probability distribution to characterize CWH lifetime. DOE sought comment on its approach of using a Weibull probability distribution to characterize equipment lifetime. *Id.*

In response to DOE's request for comment, Joint Advocates stated that Weibull survivorship was the "least bad" option for lifetime estimation. However, that method also assumed that changing water heater-related materials and processes relative to water heaters that have already died would not affect the lifetime of future units. Joint Advocates further pointed out that this assumption may not be valid, particularly for early generation of technologies. (Joint Advocates, No. 7 at p. 4) Lastly, Rheem agreed with DOE's approach of using Weibull probability distribution for lifetime analysis but cautioned that applications impact lifetime considerably. (Rheem, No. 10 at p. 8)

In response to the Joint Advocates' comment on Weibull survivorship, DOE acknowledges that changing equipment, water heater-related materials, and design processes may have an impact on future product life. DOE has not been able to obtain any information (nor have commenters provided such information) to assess how possible new designs and processes may impact future equipment life or how the use of early generation technologies informs or influences the life of equipment analyzed in this rule. Without such information, consistent with the Joint Advocates comment, DOE continued to assess lifetime of equipment in its analysis using historical data and a Weibull approach to allow for variability in equipment life within the LCC. Based on the parameters of the Weibull distribution, the lifetime for the equipment varies within each simulation run.

For the analysis of this NOPR, DOE did not obtain additional data that conflicted with its findings of an average lifetime between 10 and 25 years for different classes of CWH equipment. Consequently, DOE used a distribution of lifetimes, with the weighted averages ranging between 10 years and 25 years as shown in Table IV.29, based on a review of a range of CWH equipment lifetime estimates found in published studies and online documents. DOE applied a distribution to all classes of CWH equipment analyzed. Chapter 8 of the NOPR TSD contains a detailed discussion of CWH equipment lifetimes.

TABLE IV.29—AVERAGE CWH LIFETIME USED IN NOPR ANALYSES

CWH equipment class	Average lifetime (years)
Commercial gas-fired storage water heaters and gas-fired storage-type instantaneous water heaters	10
Residential-duty gas-fired storage water heaters	12
Gas-fired instantaneous water heaters and hot water supply boilers:	
Tankless water heaters	17
Hot water supply boilers	25
Electric storage water heaters	12

h. Discount Rate

The discount rate is the rate at which future expenditures are discounted to establish their present value. DOE determined the discount rate by estimating the cost of capital for purchasers of CWH equipment. Most purchasers use both debt and equity capital to fund investments. Therefore, for most purchasers, the discount rate is the weighted-average cost of debt and equity financing, or the weighted-average cost of capital (WACC), less the expected inflation.

To estimate the WACC of CWH equipment purchasers, DOE used a sample of more than 340 companies grouped to be representative of operators of different businesses, drawn from a database of 7,766 U.S. companies presented on the Damodaran Online Web site.[80] This database includes most of the publicly-traded companies in the United States. The WACC approach for determining discount rates accounts for the current tax status of individual firms on an overall corporate basis. DOE did not evaluate the marginal effects of increased costs, and, thus, depreciation due to more expensive equipment, on the overall tax status.

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[80] *Damodaran Online*. Damodaran financial data used for determining cost of capital (Available at: *http://pages.stern.nyu.edu/~adamodar/*) (Last accessed on 04/05/2015).

DOE used the final sample of companies to represent purchasers of CWH equipment. For each company in the sample, DOE derived the cost of debt, percentage of debt financing, and systematic company risk from information on the Damodaran Online Web site. Damodaran estimated the cost of debt financing from the nominal long-term Federal government bond rate and the standard deviation of the stock price. DOE then determined the weighted average values for the cost of debt, range of values, and standard deviation of WACC for each category of the sample companies. Deducting expected inflation from the cost of capital provided estimates of the real discount rate by ownership category.

For most educational buildings and a portion of the office buildings occupied by public schools, universities, and State and local government agencies, DOE estimated the cost of capital based on a 40-year geometric mean of an index of long-term tax-exempt municipal bonds (>20 years).[81] Federal office space was assumed to use the Federal bond rate, derived as the 40-year geometric average of long-term (≤10 years) U.S. government securities.[82]

Based on this database, DOE calculated the weighted-average, after-tax discount rate for CWH equipment purchases, adjusted for inflation. Chapter 8 of the NOPR TSD contains the detailed calculations related to discount rates.

3. Payback Period

DOE also determined the economic impact of potential amended energy conservation standards on commercial consumers by calculating the PBP of more-stringent efficiency levels relative to the baseline efficiency levels. The PBP measures the amount of time it takes the commercial consumer to recover the assumed higher purchase expense of more-efficient equipment through lower operating costs. Similar to the LCC, the PBP is based on the total installed cost and the operating expenses for all building types and purchase locations for the water-heating equipment. Because the simple PBP does not take into account changes in operating expense over time or the time value of money, DOE considered only the first year's operating expenses, including annualized repair and maintenance expenses, to calculate the PBP, unlike the LCC, which is calculated over the lifetime of the equipment. Chapter 8 of the NOPR TSD provides additional details about the PBP.

G. Shipments Analysis

In its shipments analysis, DOE developed shipment projections for commercial water heating equipment and, in turn, calculated equipment stock over the course of the analysis period. DOE uses the shipments projection and the equipment stock to calculate the national impacts of potential amended energy conservation standards on energy use, NPV, and future manufacturer cash flows. DOE develops shipment projections based on historical data and an analysis of key market drivers for each type of equipment.

To develop the shipments model, DOE started with known information on shipments of commercial electric and gas-fired storage water heaters collected for the years 1994–2013 from the AHRI Web site,[83] and extended back to 1989 with data contained in a DOE rulemaking document published in 2000.[84] The historical shipments of commercial electric and gas-fired storage water heaters are summarized in Table IV.30. Given that the estimated average useful lifetimes of these two types of equipment are 12 and 10 years, respectively, the historical shipments provided a basis for the development of a multi-year series of stock values. Using the stock values, a saturation rate was determined by dividing equipment stock by building stock, and this saturation rate was combined with annual building stock additions to estimate the shipments to new construction. With these data elements, a yearly accounting model was developed for the historical period to identify shipments deriving from new construction and from replacements of existing equipment. The accounting model also identified commercial consumer migration into or out of the storage water heater equipment classes by calculating the difference between new plus replacement shipments and the actual historical shipments.

TABLE IV.30—HISTORICAL SHIPMENTS OF COMMERCIAL GAS-FIRED AND ELECTRIC STORAGE WATER HEATERS

Year	Commercial gas-fired storage	Commercial electric storage
1994	91,027	22,288
1995	96,913	23,905
1996	127,978	26,954
1997	96,501	30,339
1998	94,577	35,586
1999	100,701	39,845
2000	99,317	44,162
2001	93,969	46,508
2002	96,582	45,819
2003	90,292	48,137
2004	96,481	57,944
2005	82,521	56,178
2006	84,653	63,170
2007	90,345	67,985
2008	88,265	68,686
2009	75,487	55,625
2010	78,614	58,349
2011	84,705	60,257
2012	80,490	67,265
2013	88,539	69,160

Source: AHRI web site, *http://www.ahrinet.org/site/494/Resources/Statistics/Historical-Data/Commercial-Storage-Water-Heaters-Historical-Data.*

No historical shipment information was available for residential-duty gas-fired storage water heaters, gas-fired tankless waters, or gas-fired hot water supply boilers. The stock accounting model requires historical stock and shipments, so DOE estimated past shipments for these equipment classes. The stock of equipment for each equipment class was developed in the same manner described for the gas-fired and electric storage water heaters.

For residential-duty gas-fired storage equipment, DOE assumed equivalency in shipments per basic model between the commercial and the residential-duty gas-fired storage water heaters. The ratio of the number of unique residential-duty gas-fired water heaters (67) to commercial gas-fired water heaters (328) listed in the analysis database was applied to the gas-fired water heater shipments, with the result being an estimated historical series of residential-duty gas-fired water heaters.

For gas-fired tankless water heaters, DOE used an estimation method discussed in industry sources (*e.g.*, the Consortium for Energy Efficiency).[85]

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[81] Federal Reserve Bank of St. Louis, *State and Local Bonds—Bond Buyer Go 20-Bond Municipal Bond Index* (Available at: *http://research.stlouisfed.org/fred2/series/MSLB20/downloaddata?cid=32995*) (Last accessed 04/05/2015).

[82] Rate calculated with 1973–2013 data. Data source: U.S. Federal Reserve (Available at: *http://www.federalreserve.gov/releases/h15/data.htm*) (Last accessed on 04/05/2015).

[83] Air Conditioning, Heating, and Refrigeration Institute, *Commercial Storage Water Heaters Historical Data* (Available at: *http://www.ahrinet.org/site/494/Resources/Statistics/Historical-Data/Commercial-Storage-Water-Heaters-Historical-Data*) (Last accessed April 1, 2015).

[84] U.S. Department of Energy, *Screening Analysis for EPACT-Covered Commercial HVAC and Water-Heating Equipment. Volume 1—Main Report* (2000). EERE–2006–STD–0098–0015 (Available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2006-STD-0098-0015*).

[85] Consortium for Energy Efficiency (CEE), *CEE Commercial Water Heating Initiative Description* (2012) (Available at: *http://library.cee1.org/sites/default/files/library/7521/CEE_GasComm_WHInitiative_5Jun2012.pdf*).

This estimation method holds that tankless water heaters constitute 10 percent of the total CWH market. Because the only data widely available are for gas-fired and electric storage unit shipments, DOE implemented this by assuming that tankless water heaters constitute 10 percent of the total shipments of gas-fired storage water heaters, electric storage water heaters, and gas-fired tankless water heaters, and that the resulting number of tankless water heaters would be split between fuel types based on relative percentages of storage water heaters. DOE performed this calculation for 2013 shipments. Shipments were estimated for earlier years by applying a year-to-year growth rate in total imports and exports (net of re-exports) of gas-fired tankless water heaters obtained from a United Nations Web site.[86]

To estimate historical shipments of instantaneous water heaters and hot water supply boilers, DOE started with an estimate of the total stock of instantaneous equipment in commercial buildings for the year 2008.[87] Based on information derived from CBECS,[88] the DOE study estimated the total stock of instantaneous water heaters and hot water supply boilers in commercial buildings to be 600,000 units. However, because CBECS data do not distinguish well between residential-rated and commercial-rated equipment, it is likely that some residential-rated tankless equipment is included in the estimated total stock. Using the shipments of commercial tankless water heaters discussed in the prior paragraph, DOE estimated the 2008 stock of commercial tankless water heaters in commercial buildings and subtracted it from the total instantaneous stock. Since DOE believes the total stock of instantaneous equipment identified in the DOE study includes tankless units that are classified by DOE as residential equipment, to account for residential tankless units, DOE assumed that the residential and commercial tankless water heaters exist in the same numbers. The difference between the total instantaneous equipment stock and the stock of residential and commercial tankless water heaters is assumed to be the 2008 stock of hot water supply boilers. Shipments of hot water supply boilers were estimated simplistically by dividing the stock by the assumed 25-year life. The pre-2008 shipments were held constant for the 25 years leading up to 2008, and post-2008 shipments were generated by linking the 2008 value to the annual percentage change in gas-fired storage shipments.

To project shipments and stock for 2014 through the end of the 30-year analysis period (2048), DOE relied on a stock accounting model. For each class of equipment, DOE projected replacement shipments based on the historical shipments, the expected useful lifetime of each equipment class, and a Weibull distribution that identifies a percentage of units still in existence from a prior year that will fail and need to be replaced in the current year. In each year, DOE assumed a fraction of the replacement market will be retired rather than replaced due to the demolition of buildings in which this CWH equipment resides. This retirement fraction was derived from building stock data from the *AEO 2015*.[89]

To project shipments of commercial water heating equipment for new construction, DOE relied on building stock data obtained from the *AEO 2015*. For this rulemaking, DOE assumes commercial water heating equipment is used in both commercial and residential buildings, including residential multi-family dwellings. DOE estimated a saturation rate for each equipment type using building and equipment stock values. The saturation rate was applied to new building additions in each year, yielding shipments to new buildings. The building stock and additions projections from the *AEO 2015* are shown Table IV.31.

TABLE IV.31—BUILDING STOCK PROJECTIONS

Year	Total commercial building stock (million sq. ft.)	Commercial building stock additions (million sq. ft.)	Total residential building stock (millions of units)	Residential building additions (millions of units)
2013	81,382	1,451	114.33	0.99
2019	85,888	2,077	119.41	1.67
2020	86,938	2,089	120.51	1.69
2025	92,037	2,027	125.82	1.70
2030	96,380	1,987	131.09	1.66
2035	100,920	2,302	136.04	1.62
2040	106,649	2,408	140.96	1.62
2045	112,186	2,651	146.22	1.73
2048	115,646	2,808	149.48	1.77

Source: EIA *AEO 2015*.

The final component in the stock accounting model is shifts to or away from particular equipment classes. Based on the historic data, there is an apparent shift toward electric storage water heaters. The historical shipments summarized in Table IV.30 showed a fairly steady growth in commercial electric storage water heaters, with shipments growing from 22,288 in 1994 to 69,160 in 2013. Over the same time period, commercial gas-fired storage water heaters have seen a decline in shipments from 91,027 in 1994, to a low of 75,487 in 2009, and to the higher value of 88,539 in 2013. Thus, there is an apparent shift away from gas-fired storage units, and because residential-duty gas-fired storage water heaters and gas-fired hot water supply boiler shipments were linked to gas-fired storage units, there is an apparent shift away from the residential-duty and hot water supply boiler equipment classes as well in the shipments analysis. These apparent shifts were developed for each equipment class and are captured in DOE's shipments model. The development of the apparent shifts and the effect on projected equipment class shipments is detailed in Chapter 7 of the TSD.

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[86] United Nations, Department of Economic and Social Affairs Statistics Division, Trade Statistics, UN Comtrade—data extraction interface (Available at: *http://comtrade.un.org/data/*) (Last accessed April 1, 2015).

[87] Navigant, *Energy Savings Potential and RD&D Opportunities for Commercial Building Appliances*. 2009. Prepared for the U.S. Department of Energy, Energy Efficiency and Renewable Energy, Building Technologies Program (Available at: *http://apps1.eere.energy.gov/buildings/publications/pdfs/corporate/commercial_appliances_report_12-09.pdf*).

[88] Energy Information Administration (EIA), *2003 Commercial Building Energy Consumption Survey (CBECS) Data* (2003) (Available at: *http://www.eia.gov/consumption/commercial/data/2003/*).

[89] U.S. Energy Information Administration (EIA), *2015 Annual Energy Outlook* (2015) Full report. DOE/EIA–0383 (2014) (Available at: *http://www.eia.gov/forecasts/aeo/*).

For each equipment class, there are factors that influence the magnitude of the apparent shifts, including relative fuel prices and the resultant energy cost of competing products, relative equipment and installation costs, repair and maintenance costs, commercial consumer preferences, and outside influences such as ENERGY STAR and utility conservation or marketing programs. If the slope of the apparent shifts in shipments is held constant at the values developed for 2013, the last year of historical data, over the study period commercial gas-fired storage water heater shipments would continue to decline, falling to 79,000 units by 2048, while over the same time period the commercial electric storage water heater shipments would climb to over 200,000 units. Nothing in the long term historical data indicates that such a wide disparity between gas-fired and electric storage water heater equipment shipments would develop. The historical data summarized in Table IV.30 show the growth rate in commercial gas-fired storage water heater equipment shipments over time to be flat, or increasing if one looks at the last 5 years. Rather than showing shifts that result in the wide disparity between commercial gas-fired and electric storage units, for the NOPR analyses DOE used a shift value equal to the 2013 shift values adjusted downward by 50 percent. The resulting shipment projection continues the observed trends of electric storage water heater shipments increasing over time at a rate faster than the commercial gas-fired water heater equipment. The resulting projection shows commercial electric storage water heater shipments exceeding commercial gas-fired storage shipments by 2030. The commercial electric storage water heater shipments exceed commercial gas-fired storage water heater shipments by approximately 25 percent in final year of the study period (2048).

For all equipment classes, DOE assumed that the apparent shift is most likely to occur in new installations rather than in the replacement installations. As described in chapter 9 of the TSD, DOE assumed that a shift is twice as likely to take place in a new installation as in a replacement installation. For example, if DOE estimated that in 2014, 20 percent of shipments for an equipment class went to new installations and 80 percent went for replacements in the absence of switching, DOE multiplied the 20 percent multiplied by 2 (40 percent) and added the 80 percent (which equals 120 percent). Both the 40 percent for new and the 80 percent for replacement were then divided by 120 percent to normalize to 100 percent.

The resulting shipment projection is shown in Table IV.32.

TABLE IV.32—SHIPMENTS OF COMMERCIAL WATER HEATING EQUIPMENT

Year	Commercial gas-fired storage water heaters	Residential-duty gas-fired storage water heaters	Gas-fired tankless water heaters	Gas-fired hot water supply boilers	Electric storage water heaters
2013	88,539	18,086	9,838	15,858	69,160
2019	95,145	19,534	8,940	21,959	86,782
2020	92,054	19,402	11,128	22,060	89,390
2025	102,269	19,243	13,323	21,969	91,501
2030	103,025	21,590	14,957	21,957	105,626
2035	109,539	20,911	14,606	22,383	121,567
2040	115,788	22,647	22,817	26,637	131,683
2045	121,163	23,725	22,625	31,671	153,854
2048	130,779	23,726	24,170	32,951	164,934

Because the estimated energy usage of CWH equipment differs by commercial and residential setting, the NIA employs the same fractions of shipments (or sales) to commercial and to residential commercial consumers used by the LCC analysis. The fractions of shipments by type of commercial consumer are shown in Table IV.33.

TABLE IV.33—SHIPMENT SHARES BY TYPE OF COMMERCIAL CONSUMER

Equipment class	Commercial (%)	Residential (%)
Commercial gas-fired storage water heaters and gas-fired storage-type instantaneous water heaters	81.0	19.0
Residential-duty gas-fired storage water heaters	48.0	52.0
Gas-fired instantaneous water heaters and hot water supply boilers:		
Gas-fired tankless water heaters	67.0	33.0
Gas-fired hot water supply boilers	82.0	18.0
Electric storage water heaters	77.0	23.0

Issue 25: DOE seeks input on actual historical shipments for the three equipment classes for which no historical shipments data exist—residential-duty gas-fired storage water heaters, gas-fired tankless water heaters, and gas-fired hot water supply boilers.

Issue 26: DOE seeks input on the methodology used to estimate the historical shipments for the residential-duty gas-fired storage water heater, gas-fired tankless water heater, and hot water supply boiler equipment classes, particularly in the absence of actual historic shipments data.

Issue 27: DOE seeks input on commercial consumer switching between equipment types or fuel types, and specific information that DOE can use to model such commercial consumer switching. For example, if a commercial consumer switches away from commercial gas-fired storage water heaters, to what type of equipment is the commercial consumer most likely to switch, and is it a one-for-one switch or some other ratio?

Issue 28: DOE seeks input on the shares of shipments allocated to commercial and to residential consumer types.

For the NIA model, shipments must be disaggregated by efficiency levels that correspond to the levels analyzed in the engineering and LCC analyses. To identify the percentage of shipments corresponding to each efficiency level, DOE compiled and analyzed a database of equipment currently produced and sold by manufacturers. The sources of information for this database included the AHRI Certification Directory,[90] the California Energy Commission Appliance Efficiency Database,[91] and manufacturer catalogs and Web sites. DOE recognizes that demand varies across different models of equipment, and that by relying on the database of existing equipment DOE is explicitly assuming each model of equipment is equally likely to be shipped for sale to commercial consumers. Lacking data to the contrary, DOE determined that the distribution of shipments by efficiency level derived from available equipment models is a reasonable approximation of the distribution that would be derived from actual equipment shipments.

Pursuant to DOE's October 2014 RFI, stakeholders commented on inputs to the shipment analysis and offered support. AHRI mentioned that it was consulting with its members to develop information that addressed efficiency market shares of shipments and would provide the findings to DOE once they were collated. (AHRI, No. 5 at p. 6) Rheem stated that over the last 3 years, the shipments mix had increased towards high-efficiency gas-fired condensing water heaters. (Rheem, No. 10 at p. 8) Bradford White stated that it would work with AHRI to respond on current and historical efficiency shares of shipments. (Bradford White, No. 3 at p. 3) DOE appreciates the offer of assistance from AHRI and manufacturers. DOE notes that this information was not received (or at least, not received in time for use in this NOPR), but DOE remains hopeful that AHRI and manufacturers can provide information on shipments, generally, and on shipment efficiency distributions for use in the next phase of this rulemaking.

Rheem stated that the percentage of commercial water heaters used in single-family residential-duty applications is minimal. (Rheem, No. 10 at p. 6) DOE's LCC analysis estimated the fraction of each equipment type that is applied to residential or commercial building types. For the shipment analysis, the distinction between single-family and multifamily construction would have a second-order impact on the estimates of shipments. DOE uses the building stock estimates to derive annual saturation rates, which are then applied to estimated new construction. For the NOPR, DOE used total residential building stocks. If DOE used only multifamily stocks, the saturation rates would be higher, but the stock against which it is applied would be smaller, so from a mathematical perspective, the results would be similar. The main difference would derive from the fact that multifamily construction would be projected to grow at different rates by EIA than would total residential construction. Over the 30-year analysis period, total residential stock grows at 1.0 percent while multifamily stock grows at 0.8 percent.

Issue 29: DOE seeks input on whether the shipment model should assume that multifamily buildings are the only residential building stock in which CWH equipment is used, or whether DOE should continue to use total residential building stocks.

In terms of evaluating shipment growth, DOE used the projected number of millions of square feet of floor space additions and new residential construction to drive the new additions forecast. A number of the topics discussed in the Joint Advocates comment, such as the impact of increased equipment height or diameter on the ease with which the equipment can physically be carried into a building, were considered in the estimation of installation costs in the LCC analysis.

H. National Impact Analysis

The national impact analysis (NIA) analyzes the effects of a potential energy conservation standard from a national perspective. The NIA assesses the NES and the NPV of total commercial consumer costs and savings that would be expected to result from the amended standards. The NES and NPV are analyzed at specific efficiency levels (*i.e.*, TSLs) for each equipment class of CWH equipment. DOE calculates the NES and NPV based on projections of annual equipment shipments, along with the annual energy consumption and total installed cost data from the LCC analysis. For the NOPR analysis, DOE forecasted the energy savings, operating cost savings, equipment costs, and NPV of commercial consumer benefits for equipment shipped from 2019 through 2048—the year in which the last standards-compliant equipment would be shipped during the 30-year analysis period.

DOE evaluates the impacts of the new and amended standards by comparing no-new-standards-case projections with standards-case projections. The no-new-standards-case projections characterize energy use and commercial consumer costs for each equipment class in the absence of any new or amended energy conservation standards. DOE compares these no-new-standards-case projections with projections characterizing the market for each equipment class if DOE adopted the amended standards at each TSL. For the standards cases, DOE assumed a "roll-up" scenario in which equipment at efficiency levels that do not meet the standard level under consideration would "roll up" to the efficiency level that just meets the proposed standard level, and equipment already being purchased at efficiency levels at or above the proposed standard level would remain unaffected.

DOE uses a computer spreadsheet model to calculate the energy savings and the national commercial consumer costs and savings from each TSL. Chapter 10 and appendix 10A of the NOPR TSD explain the models and how to use them, and interested parties can review DOE's analyses by interacting with these spreadsheets. The models and documentation are available on DOE's Web site.[92] Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet.

Unlike the LCC analysis, the NES analysis does not use distributions for inputs or outputs, but relies on national average equipment costs and energy costs. DOE used the NES spreadsheet to perform calculations of energy savings and NPV using the annual energy consumption, maintenance and repair costs, and total installed cost data from the LCC analysis. The NIA also uses projections of energy prices and building stock and additions from the *AEO 2015* Reference case. Additionally, DOE analyzed scenarios that used inputs from the *AEO 2015* Low Economic Growth and High Economic Growth cases. These cases have lower and higher energy price trends, respectively, compared to the Reference case. NIA results based on these cases are presented in chapter 10 of the NOPR TSD.

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[90] AHRI Certification Directory is available at: *https://www.ahridirectory.org/ahridirectory/pages/home.aspx.*

[91] California Energy Commission Appliance Efficiency Database is available at: *https://cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx.*

[92] DOE's Web page on commercial water heating equipment is available at: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=36.*

A detailed description of the procedure to calculate NES and NPV and inputs for this analysis are provided in chapter 10 of the NOPR TSD.

1. Equipment Efficiency in the No-New-Standards Case and Standards Cases

DOE uses a no-new-standards-case distribution of efficiency levels to project what the CWH equipment market would look like in the absence of amended standards. DOE developed the no-new-standards-case distribution of equipment by thermal efficiency levels, and by standby loss efficiency levels, for CWH equipment by analyzing a database[93] of equipment currently available. DOE applied the percentages of models within each efficiency range to the total unit shipments for a given equipment class to estimate the distribution of shipments for the no-new-standards case. Then, from those market shares and projections of shipments by equipment class, DOE extrapolated future equipment efficiency trends both for a no-new-standards-case scenario and for standards-case scenarios.

This rulemaking is examining potential improvements for both thermal efficiency of equipment and in the standby energy usage. Thus, two sets of efficiency distributions for the no-new standards-case scenario were developed for these classes. Table IV.34 shows the distribution of equipment by thermal efficiency level. The standby loss efficiency distribution is summarized in Table IV.35.

TABLE IV.34—MARKET SHARES BY THERMAL EFFICIENCY LEVEL*

Equipment class	E_t EL0** (%)	E_t EL1 (%)	E_t EL2 (%)	E_t EL3 (%)	E_t EL4 (%)	E_t EL5 (%)
Commercial gas-fired storage water heaters and gas-fired storage-type instantaneous water heaters	57	12	0	6	23	1
Residential-duty gas-fired storage water heaters	66	9	3	16	6	
Gas-fired instantaneous water heaters and hot water supply boilers:						
Gas-fired tankless water heaters	16	40	28	4	4	8
Gas-fired hot water supply boilers	40	24	14	2	7	13
Electric storage water heaters	100					

* Due to rounding, shares for each equipment class might not add to 100 percent.
** E_t EL refers to Thermal Efficiency Level.

TABLE IV.35—MARKET SHARES BY STANDBY LOSS EFFICIENCY LEVEL

Equipment class	Standby loss level**	E_t EL0* %	E_t EL1 (%)	E_t EL2 (%)	E_t EL3 (%)	E_t EL4 (%)	E_t EL5 (%)
Commercial gas-fired Storage and storage-type instantaneous water heaters.	SL EL0	76	88	0	67	33	75
	SL EL1	20	0	0	19	14	25
	SL EL2	4	13	100	14	53	0
Residential-duty gas-fired storage water heaters.	SL EL0	82	17	0	0	0	
	SL EL1	11	0	100	100	100	
	SL EL2	5	17	0	0	0	
	SL EL3	2	67	0	0	0	
Electric storage water heaters.	SL EL1	97					
	SL EL2	3					

* E_t EL refers to Thermal Efficiency Level.
** SL EL refers to Standby Loss Efficiency Level.

For each efficiency level analyzed, DOE used a "roll-up" scenario to establish the market shares by efficiency level for the year that compliance would be required with amended standards. The analysis starts with the no-new-standards-case distributions wherein shipments are assumed to be distributed across thermal efficiency levels as shown in Table IV.34. When potential standard levels above the base level are analyzed, as the name implies, the shipments in the no-new-standards case that did not meet the thermal efficiency standard level being considered would roll up to meet the amended standard level. This information also suggests that equipment efficiencies in the no-new-standards case that were above the standard level under consideration would not be affected.

For the equipment classes for which standby loss standards are being considered, the analysis takes into account a two-dimensional rollup. Equipment is distributed across the thermal efficiency levels, and for 3 classes, across the SL efficiency levels. Thus, in the analysis, a second roll-up occurs starting with equipment distributed across SL efficiency levels as shown in Table IV.35. As higher SL levels are considered, equipment not meeting the standard being considered would roll-up to the SL level being considered. The no-new-standards-case efficiency distributions for each equipment class are discussed more fully in chapter 10 of the NOPR TSD.

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[93] This database was developed using model data from the AHRI Certification Directory (available at: *https://www.ahridirectory.org/ahridirectory/pages/home.aspx*), California Energy Commission Appliance Efficiency Database (available at: *https://cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx*), and manufacturer Web sites and catalogs.

2. National Energy Savings

The inputs for determining the NES are: (1) Annual energy consumption per unit; (2) shipments; (3) equipment stock; and (4) site-to-source and full-fuel-cycle conversion factors.

DOE calculated the NES associated with the difference between the per-unit energy use under a standards-case scenario and the per-unit energy use in the no-new-standards case. The average energy per unit used by the commercial water heating equipment stock gradually decreases in the standards case relative to the no-new-standards case as more-efficient commercial water heating units gradually replaces less-efficient units.

Unit energy consumption values for each equipment class are taken from the LCC spreadsheet for each efficiency level and weighted based on market efficiency distributions. To estimate the total energy savings for each efficiency level, DOE first calculated the per-unit energy reduction (*i.e.,* the difference between the energy directly consumed by a unit of equipment in operation in the no-new-standards case and the standards case) for each class of commercial water heating equipment for each year of the analysis period. The analysis period begins with the expected compliance date of amended energy conservation standards (*i.e.,* 2019, or 3 years after the publication of a final rule issued as a result of this rulemaking). Second, DOE determined the annual site energy savings by multiplying the stock of each equipment class by vintage (*i.e.,* year of shipment) by the per-unit energy reduction for each vintage (from step one). Third, DOE converted the annual site electricity savings into the annual amount of energy saved at the source of electricity generation (the source or primary energy), using a time series of conversion factors derived from the latest version of EIA's National Energy Modeling System (NEMS). Finally, DOE summed the annual primary energy savings for the lifetime of units shipped over a 30-year period to calculate the total NES. DOE performed these calculations for each efficiency level considered for commercial water heating equipment in this rulemaking.

DOE has historically presented NES in terms of primary energy savings. In the case of electricity use and savings, primary energy savings include the energy lost in the power system in the form of losses as well as the energy input required at the electric generation station in order to convert and deliver the energy required at the site of consumption. DOE uses a multiplicative factor called the "site-to-source conversion factor" to convert site energy consumption to primary energy consumption.

In response to the recommendations of a committee on "Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards" appointed by the National Academy of Sciences, DOE announced its intention to use full-fuel-cycle (FFC) measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (August 18, 2011). While DOE stated in that notice that it intended to use the Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation (GREET) model to conduct the analysis, it also said it would review alternative methods, including the use of NEMS. After evaluating both models and the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in the **Federal Register** in which DOE explained its determination that NEMS is a more appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012). DOE received one comment, which was supportive of the use of NEMS for DOE's FFC analysis.[94]

The approach used for this NOPR, the site-to-source ratios, and the FFC multipliers that were applied are described in appendix 10D of the NOPR TSD. NES results are presented in both primary and FFC savings in section V.B.3.a.

DOE considered whether a rebound effect is applicable in its NES analysis for commercial water heating equipment. A rebound effect occurs when an increase in equipment efficiency leads to increased demand for its service. For example, when a commercial consumer realizes that a more-efficient water heating device will lower the energy bill, that person may opt to increase his or her amenity level, for example, by taking longer showers and thereby consuming more hot water. In this way, the commercial consumer gives up a portion of the energy cost savings in favor of the increased amenity. For the CWH equipment market, there are two ways that a rebound effect could occur: (1) Increased use of hot water within the buildings in which such units are installed; and (2) additional hot water outlets that were not previously installed. Because the CWH equipment that are the subject of this notice are commercial equipment, the person owning the equipment (*i.e.,* the apartment or commercial building owner) is usually not the person operating the equipment (*e.g.,* the apartment renter, or the restaurant employee using hot water to wash dishes). Because the operator usually does not own the equipment, that person will not have the operating cost information necessary to influence his or her operation of the equipment. Therefore, DOE believes the first type of rebound is unlikely to occur at levels that could be considered significant. Similarly, the second type of rebound is unlikely because a small change in efficiency is insignificant among the factors that determine whether a company will invest the money required to pipe hot water to additional outlets.

In the October 2014 RFI, DOE sought comments and data on any rebound effect that may be associated with more efficient commercial water heaters. 79 FR 62908 (October 21, 2014). DOE received two comments. Both A. O. Smith and Joint Advocates did not believe a rebound effect would be significant. A.O. Smith commented that water usage is based on demand and more efficient water heaters won't change the demand. (A. O. Smith, No. 2 at p. 4) Joint Advocates commented that with the marginal change in energy bill for small business owners, they would expect little increased hot water usage, and that for tenant-occupied buildings it would be "difficult to infer that more tenants will wash their hands longer because the hot water costs the building owner less." Thus, Joint Advocates thought the likelihood of a strong rebound effect is very low. (Joint Advocates, No. 7 at p. 5) Based on its understanding of CWH equipment use as well as comments received from stakeholders, DOE concurs that the likelihood of a rebound effect is small and has not included a rebound effect in the analysis.

American Gas Association suggested that DOE use full-fuel-cycle measurements in its analysis. (AGA, No. 4 at p. 2) DOE agrees with the suggestion.

Issue 30: DOE seeks input on the possibility that rebound effect would be significant, and if so, estimates of the impact of the rebound effect on NES.

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[94] Docket ID: EERE–2010–BT–NOA–0028, comment by Kirk Lundblade.

3. Net Present Value

To estimate the NPV, DOE calculated the net impact as the difference between total operating cost savings and increases in total installed costs. DOE calculated the NPV of each considered standard level over the life of the equipment using the following three steps.

First, DOE determined the difference between the equipment costs under the standard-level case and the no-new-standards case in order to obtain the net equipment cost increase resulting from the higher standard level. As noted in section IV.F.2.a, DOE used a constant real price assumption as the default price projection; the cost to manufacture a given unit of higher efficiency neither increases nor decreases over time. The analysis of the price trends is described in appendix 10B of the NOPR TSD.

Second, DOE determined the difference between the no-new-standards-case operating costs and the standard-level operating costs in order to obtain the net operating cost savings from each higher efficiency level. Third, DOE determined the difference between the net operating cost savings and the net equipment cost increase in order to obtain the net savings (or expense) for each year. DOE then discounted the annual net savings (or expenses) to 2015 for CWH equipment bought on or after 2019 and summed the discounted values to provide the NPV for an efficiency level.

In accordance with the OMB's guidelines on regulatory analysis,[95] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. The 7-percent rate is an estimate of the average before-tax rate of return on private capital in the U.S. economy. DOE used this discount rate to approximate the opportunity cost of capital in the private sector, because recent OMB analysis has found the average rate of return on capital to be near this rate. DOE used the 3-percent rate to capture the potential effects of standards on private consumption (*e.g.,* through higher prices for products and reduced purchases of energy). This is the rate at which society discounts future consumption flows to their present value. This rate can be approximated by the real rate of return on long-term government debt (*i.e.,* yield on United States Treasury notes minus annual rate of change in the Consumer Price Index), which has averaged about 3 percent on a pre-tax basis for the past 30 years.

American Gas Association recommended that DOE include a fuel switching analysis to ensure that standards would not result in switching to less-efficient energy sources. (AGA, No. 4 at p. 2) As part of the analysis, DOE examined the possibility of fuel switching by using NIA inputs to examine commercial consumer payback periods in situations where commercial consumers switch from gas-fired to electric water heaters. In an attempt to make the values comparable, DOE adjusted values using ratios based on the first-hour ratings shown in Table IV.36. In the case of moving from a commercial gas-fired to an electric storage water heater, the electric water heater would cost more to purchase and install and cost more to operate. In the comparison of residential-duty gas-fired to electric storage water heaters, the electric water heater would be less expensive to purchase and install, but sufficiently more expensive to operate, such that the upfront cost savings would be outweighed by higher operating costs in 3 years. Based on the comparison of storage water heating equipment, DOE does not believe fuel switching from gas to electricity to be an issue.

TABLE IV.36—FIRST-HOUR EQUIPMENT RATINGS USED IN FUEL SWITCHING ANALYSIS

Year	Commercial gas-fired storage water heaters	Residential-duty gas-fired storage water heaters	Gas-fired tankless water heaters	Gas-fired hot water supply boilers	Electric storage water heaters
First-Hour Rating (gal)	283	134	268	664	165
Ratio to Commercial Gas-fired Storage	1.00	0.47	*0.32	2.34	0.58

* The ratio of the number of installed commercial gas-fired storage water heaters to installed gas-fired tankless water heaters is not directly comparable using only first-hour ratings. The ratio shown reflects in-use delivery capability of the representative gas-fired tankless water heater model relative to the delivery capability of the representative commercial gas-fired storage water heater, and includes an estimated 3-to-1 delivery capability tradeoff in combination with the first-hour rating.

DOE did not consider instantaneous gas-fired equipment and electric storage to be likely objects of gas-to-electric fuel switching, largely due to the disparity in hot water delivery capacity between the instantaneous gas-fired equipment and commercial electric storage equipment. As the first-hour ratings indicate in Table IV.36, a commercial consumer would need to purchase between 2 and 4 electric storage water heaters to switch from instantaneous gas-fired equipment to the electric storage equipment. While feasible for commercial consumers not facing space constraints, DOE considered it unlikely that these consumers would chose to replace one wall-mounted tankless unit with two much larger floor-mounted electric storage water heaters. It also seemed unlikely that consumers would replace one hot water supply boiler with multiple electric storage water heaters.

Accordingly, for the NOPR, DOE did not explicitly include fuel switching beyond the continuation of historical trends discussed in section IV.G.

I. Commercial Consumer Subgroup Analysis

In analyzing the potential impact of new or amended standards on commercial consumers, DOE evaluates the impact on identifiable groups (*i.e.,* subgroups) of consumers, such as consumers at comparatively lower income levels that may be disproportionately affected by a new or revised national energy conservation standard level. The purpose of the subgroup analysis is to determine the extent of any such disproportionate impacts. For this rulemaking, DOE identified commercial consumers at the lowest income bracket in the residential sector and only included them for the residential sector subgroup analysis. Additionally, DOE identified small business groups in CBECS and only included those samples in the commercial sector subgroup analysis. The following provides further detail regarding DOE's consumer subgroup analysis.

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[95] Office of Management and Budget, section E in *OMB Circular A–4* (Sept. 17, 2003) (Available at: *www.whitehouse.gov/omb/circulars_a004_a-4*).

Residential Sector Subgroup Analysis: The RECS database divides the residential samples into 24 income bins. The income bins represent total gross annual household income. As far as discount rates are concerned, the survey of consumer finances divides the residential population into six different income bins: Income bin 1 (0–20% income percentile), income bin 2 (20–40% income percentile), income bin 3 (40–60% income percentile), income bin 4 (60–80% income percentile), income bin 5 (80–90% income percentile), and income bin 6 (90–100% income percentile). In general, consumers in the lower income groups tend to discount future streams of benefits at a higher rate, when compared to consumers in the higher income groups.

Hence, to analyze the influence of a national standard on the low-income group population, DOE conducted a (residential) subgroup analysis where only the 0–20% income percentile samples were included for the entire simulation run. Subsequently, the results of the subgroup analysis are compared to the results from all commercial consumers.

Commercial Sector Subgroup Analysis: DOE identified small businesses within CBECS by using threshold levels in different building types. Threshold levels indicating maximum number of employees in each building type (such as Assembly, Education, Food Service, Office, Retail, and Warehouse) are used to identify small business within CBECS. Subsequently, in addition to the discount rate chosen for each "small business" sample, a premium of 1.9 percent is added to evaluate future benefit and cost streams.[96] A premium of 1.9 percentage points is added to each discounted rate by business type from the central LCC to reflect the appropriate discount costs for small business entities of that business type. This analytical setup reflects the fact that in general, smaller businesses tend to discount future streams of monetary flows at higher rates.

The results of DOE's LCC subgroup analysis for both subgroups are summarized in section V.B.1.b of this notice and described in detail in chapter 11 of the NOPR TSD.

J. Manufacturer Impact Analysis

1. Overview

DOE performed a manufacturer impact analysis (MIA) to determine the financial impact of amended energy conservation standards on manufacturers of CWH equipment and to estimate the potential impact of amended standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects. The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (GRIM), an industry cash-flow model with inputs specific to this rulemaking. The key GRIM inputs are industry cost structure data, shipment data, equipment costs, and assumptions about markups and conversion costs. The key output is the industry net present value (INPV). DOE used the GRIM to calculate cash flows using standard accounting principles and to compare changes in INPV between a no-new-standards case and various TSLs (the standards cases). The difference in INPV between the no-new-standards case and standards cases represents the financial impact of amended energy conservation standards on manufacturers of CWH equipment. DOE used different sets of assumptions (markup scenarios) to represent the uncertainty surrounding potential impacts on prices and manufacturer profitability as a result of amended standards. These different assumptions produce a range of INPV results. The qualitative part of the MIA addresses the proposed standard's potential impacts on manufacturing capacity and industry competition, as well as any differential impacts the proposed standard may have on any particular subgroup of manufacturers. The qualitative aspect of the analysis also addresses product characteristics, as well as any significant market or product trends. The complete MIA is outlined in chapter 12 of the NOPR TSD.

DOE conducted the MIA for this rulemaking in three phases. In the first phase of the MIA, DOE prepared an industry characterization based on the market and technology assessment, preliminary manufacturer interviews, and publicly-available information. As part of its profile of the CWH industry, DOE also conducted a top-down cost analysis of manufacturers in order to derive preliminary financial inputs for the GRIM (*e.g.*, sales, general, and administration (SG&A) expenses; research and development (R&D) expenses; and tax rates). DOE used public sources of information, including company SEC 10–K filings,[97] corporate annual reports, the U.S. Census Bureau's Economic Census,[98] and Hoover's reports [99] to conduct this analysis.

In the second phase of the MIA, DOE prepared an industry cash-flow analysis to quantify the potential impacts of amended energy conservation standards. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways. These include: (1) Creating a need for increased investment; (2) raising production costs per unit; and (3) altering revenue due to higher per-unit prices and due to possible changes in sales volumes. DOE estimated industry cash flows in the GRIM at various potential standard levels using industry financial parameters derived in the first phase and the shipment scenario used in the NIA. DOE used the GRIM to model impacts from proposed energy conservation standards for both thermal efficiency and standby loss. The GRIM results for the standards for both metrics were analyzed together because the examined trial standard levels include both thermal efficiency and standby loss levels (see section V.A for more detail).

In the third phase of the MIA, DOE conducted structured, detailed interviews with a variety of manufacturers that represent approximately 88 percent of domestic sales of CWH equipment covered by this rulemaking. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM. DOE also solicited information about manufacturers' views of the industry as a whole and their key concerns regarding this rulemaking. Section IV.J.3 includes a description of the key issues manufacturers raised during the interviews.

Additionally, in the third phase, DOE evaluated subgroups of manufacturers that may be disproportionately impacted by amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash-flow analysis. For example, small manufacturers, niche players, or manufacturers exhibiting a cost structure that largely differs from the industry average could be more negatively affected by amended energy conservation standards. DOE identified one subgroup (small manufacturers) for a separate impact analysis.

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[96] U.S. Small Business Administration, *The Small Business Economy* (Available at: *https://www.sba.gov/advocacy/small-business-economy*) (Last accessed May 26, 2015).

[97] U.S. Securities and Exchange Commission, Annual 10–K Reports (Various Years) (Available at: *http://www.sec.gov/edgar/searchedgar/companysearch.html*).

[98] U.S. Census Bureau, Annual Survey of Manufacturers: General Statistics: Statistics for Industry Groups and Industries (2011) (Available at: *http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t*).

[99] Hoovers Inc. Company Profiles, Various Companies (Available at: *http://www.hoovers.com*).

To identify small businesses for this analysis, DOE applied the small business size standards published by the Small Business Administration (SBA) to determine whether a company is considered a small business. 65 FR 30836, 30848 (May 15, 2000), as amended at 77 FR 49991, 50000, 50011 (August 20, 2012) and codified at 13 CFR part 121. The small business size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at: *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* CWH manufacturing is classified under NAICS code 333318, "Other Commercial and Service Industry Machinery Manufacturing." To be considered a small business under this category, a CWH equipment manufacturer may employ a maximum of 1,000 employees. This 1,000-employee threshold includes all employees in a business's parent company and any other subsidiaries. Based on this classification, DOE identified 13 manufacturers of CWH equipment that qualify as small businesses. The CWH small manufacturer subgroup is discussed in section VI.B of this NOPR and in chapter 12 of the NOPR TSD.

2. GRIM Analysis

DOE uses the GRIM to quantify the potential changes in cash flow due to amended standards that result in a higher or lower industry value. The GRIM is used to conduct an annual cash-flow analysis using standard accounting principles that incorporates manufacturer costs, markups, shipments, and industry financial information as inputs. DOE thereby calculated a series of annual cash flows, beginning in 2015 (the base year of the analysis) and continuing to 2048. DOE summed the stream of annual discounted cash flows during this period to calculate INPVs at each TSL. For CWH equipment manufacturers, DOE used a real discount rate of 9.1 percent, which was derived from industry financial information and then modified according to feedback received during manufacturer interviews. DOE also used the GRIM to model changes in costs, shipments, investments, and manufacturer margins that could result from amended energy conservation standards.

After calculating industry cash flows and INPV, DOE compared changes in INPV between the no-new-standards case and each standards case. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the amended energy conservation standard on manufacturers at a particular TSL. As discussed previously, DOE collected this information on GRIM inputs from a number of sources, including publicly-available data and confidential interviews with a number of manufacturers. GRIM inputs are discussed in more detail in the next section. The GRIM results are discussed in section V.B.2. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the NOPR TSD.

For consideration of amended standby loss standards, DOE modeled the impacts to manufacturers of adapting their currently-offered equipment to comply with each potential standby loss level analyzed in the engineering analysis. The GRIM analysis incorporates the incremental increases in MPC at each standby loss level and the resulting impacts on markups. Section IV.C.3 and chapter 5 of the NOPR TSD include further discussion of efficiency levels and equipment classes analyzed.

a. Government Regulatory Impact Model Key Inputs

Manufacturer Production Costs

Manufacturing higher-efficiency equipment is typically more expensive than manufacturing baseline equipment due to the use of more complex and costly components. The changes in the MPCs of the analyzed equipment can affect the revenues, gross margins, and cash flow of the industry. As a result, MPCs are key GRIM inputs for DOE's analysis.

In the MIA, DOE used the MPCs for each considered efficiency level calculated in the engineering analysis, as described in section IV.C and further detailed in chapter 5 of the NOPR TSD. In addition, DOE used information from its teardown analysis (described in chapter 5 of the TSD) to disaggregate the MPCs into material, labor, depreciation, and overhead costs. To calculate the MPCs for equipment at and above the baseline, DOE performed teardowns and cost analysis that allowed DOE to estimate the incremental material, labor, depreciation, and overhead costs for equipment above the baseline. These cost breakdowns and equipment markups were validated and revised with input from manufacturers during manufacturer interviews.

Shipments Forecast

The GRIM estimates manufacturer revenues based on total unit shipment forecasts and the distribution of these values by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipment forecasts derived from the shipments analysis from 2015 (the base year) to 2048 (the end year of the analysis period). The shipments model divides the shipments of CWH equipment into specific market segments. The model starts from a historical base year and calculates retirements and shipments by market segment for each year of the analysis period. This approach produces an estimate of the total equipment stock, broken down by age or vintage, in each year of the analysis period. In addition, the equipment stock efficiency distribution is calculated for the no-new-standards case and for each standards case for each equipment class. The NIA shipments forecasts are based on a roll-up scenario. The forecast assumes that equipment in the no-new-standards case that does not meet the standard under consideration would "roll up" to meet the amended standard beginning in the compliance year of 2019. Section IV.G and chapter 9 of the NOPR TSD include additional details on the shipments analysis.

Product and Capital Conversion Costs

Amended energy conservation standards would cause manufacturers to incur one-time conversion costs to bring their production facilities and equipment designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level for each equipment class. For the MIA, DOE classified these conversion costs into two major groups: (1) Capital conversion costs; and (2) product conversion costs. Capital conversion costs are one-time investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant equipment designs can be fabricated and assembled. Product conversion costs are one-time investments in research, development, testing, marketing, and other non-capitalized costs necessary to make equipment designs comply with amended energy conservation standards.

To develop conversion cost estimates, DOE used feedback received during manufacturer interviews, as well as data on manufacturing and equipment development costs derived from the equipment teardowns and engineering analysis discussed in chapter 5 of the NOPR TSD. DOE estimated conversion costs required to meet higher thermal efficiency levels for each equipment class and also evaluated conversion costs required to achieve higher standby loss levels, where applicable.

To evaluate the level of capital conversion expenditures manufacturers would likely incur to comply with amended thermal efficiency levels, DOE used data derived from the engineering analysis and equipment teardowns. DOE used these analyses to estimate investments in property, plant, and equipment that would be necessary to achieve higher thermal efficiency levels. DOE also used results from the engineering analysis to estimate capital expenditures manufacturers may have to make to upgrade their R&D and testing facilities.

To evaluate the level of product conversion costs manufacturers would likely incur to comply with amended thermal efficiency standards, DOE estimated the number of platforms each manufacturer would have to modify in order to move their equipment lines to each incremental efficiency level. These platform number estimates were based on the variation of units by input capacity offered by each manufacturer. DOE then developed the product conversion costs by estimating the amount of labor per platform manufacturers would need for research and development to raise models to each incremental efficiency level.

To evaluate the level of conversion costs manufacturers would likely incur to comply with amended standby loss standards, DOE used feedback received during manufacturer interviews, as well as data derived from the engineering analysis. For both commercial gas-fired storage water heaters and electric storage water heaters, DOE estimated that manufacturers would incur approximately $1.1 million in capital conversion costs at all standby loss levels above the baseline. For residential-duty gas-fired storage water heaters, DOE did not include capital conversion costs at the analyzed standby loss levels, because DOE has tentatively concluded that manufacturers already possess the machinery and tooling necessary to achieve those levels as part of their current production capabilities for either residential water heaters or residential-duty commercial water heaters. DOE does not expect manufacturers to incur any product conversion costs related to amended standby loss standards, because DOE expects no substantial redesign work or research and development would be necessary to achieve the standby loss levels analyzed in the engineering analysis. Section IV.C.3.b of this NOPR and Chapter 5 of the NOPR TSD include additional details on the efficiency levels analyzed in the engineering analysis.

Issue 31: DOE requests comment on whether manufacturers would incur any product conversion costs (*i.e.*, substantial redesign work or research and development) related to the standby loss levels analyzed in this NOPR.

In general, DOE assumes that all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the amended standards. The conversion cost figures used in the GRIM can be found in section V.B.2 of this notice. For additional information on the estimated product and capital conversion costs, see chapter 12 of the NOPR TSD.

b. Government Regulatory Impact Model Scenarios

Markup Scenarios

As discussed in the previous section, MSPs include direct manufacturing production costs (*i.e.*, labor, materials, depreciation, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.*, SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied non-production cost markups to the MPCs estimated in the engineering analysis for each equipment class and efficiency level. Specifically, the manufacturer markup is a multiplier that is applied to the MPC. The MSP is calculated by adding the shipping cost to the product of the MPC and manufacturer markup. Modifying these markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case markup scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) A preservation of gross margin percentage markup scenario; and (2) a preservation of per-unit operating profit markup scenario. These scenarios lead to different markup values that, when applied to the inputted MPCs, result in varying revenue and cash-flow impacts.

Under the preservation of gross margin percentage markup scenario, DOE applied a single uniform "gross margin percentage" markup across all efficiency levels, which assumes that following amended standards, manufacturers would be able to maintain the same amount of profit as a percentage of revenue at all efficiency levels within an equipment class. As production costs increase with efficiency, this scenario implies that the absolute dollar markup will increase as well. Because manufacturers are able to fully pass through additional costs due to standards to commercial consumers, the preservation of gross margin percentage markup scenario represents the upper bound of the CWH industry's profitability in the standards case.

To estimate the average non-production cost markup used in the preservation of gross margin percentage markup scenario, DOE analyzed publicly-available financial information for manufacturers of CWH equipment. DOE then requested feedback on its initial markup estimates during manufacturer interviews. The revised markups, which are used in DOE's quantitative analysis of industry financial impacts, are presented in Table IV.37. These markups capture all non-production costs, including SG&A expenses, R&D expenses, interest expenses, and profit.

TABLE IV.37—MANUFACTURER MARKUPS BY EQUIPMENT CLASS FOR PRESERVATION OF GROSS MARGIN SCENARIO

Equipment class	Markup
Commercial gas-fired storage and gas-fired storage-type instantaneous water heaters	1.45
Residential-duty gas-fired storage water heaters	1.45
Gas-fired instantaneous water heaters and hot water supply boilers:	
Tankless water heaters	1.43
Hot water supply boilers	1.43
Electric storage water heaters	1.41

DOE also models the preservation of per-unit operating profit scenario because manufacturers stated that they do not expect to be able to mark up the full cost of production in the standards case, given the highly competitive nature of the CWH market. In this scenario, manufacturer markups are set so that operating profit one year after the compliance date of amended energy conservation standards is the same as in the no-new-standards case on a per-unit basis. In other words, manufacturers are not able to garner additional operating profit from the higher production costs and the investments that are required to comply with the amended standards; however, they are able to maintain the same operating profit in the standards case that was earned in the no-new-standards case. Therefore, operating margin in percentage terms is reduced between the no-new-standards case and standards case. DOE adjusted the manufacturer markups in the GRIM at each TSL to yield approximately the same per-unit earnings before interest and taxes in the standards case as in the no-new-standards case. The preservation of per-unit operating profit markup scenario represents the lower bound of industry profitability in the standards case. This is because manufacturers are not able to fully pass through to commercial consumers the additional costs necessitated by amended standards for CWH equipment, as they are able to do in the preservation of gross margin percentage markup scenario.

3. Manufacturer Interviews

DOE interviewed manufacturers representing approximately 88 percent of the CWH market by revenue. DOE contractors endeavor to conduct interviews with a representative cross-section of manufacturers (including large and small manufacturers, covering all equipment classes and product offerings). DOE contractors reached out to all the small business manufacturers that were identified as part of the analysis, as well as larger manufacturers that have significant market share in the CWH market. As part of these interviews, DOE gathered manufacturer feedback regarding both the engineering analysis and MIA for this rulemaking. The information gathered during these interviews enabled DOE to tailor the GRIM to reflect the unique financial characteristics of the CWH industry. All interviews provided information that DOE used to evaluate the impacts of potential amended energy conservation standards on manufacturer cash flows, manufacturing capacities, and employment levels.

In interviews, DOE asked manufacturers to describe their major concerns with potential standards arising from a rulemaking involving CWH equipment. Manufacturer interviews are conducted under non-disclosure agreements (NDAs), so DOE does not document these discussions in the same way that it does public comments in the comment summaries and DOE's responses throughout the rest of this notice. The following sections highlight the most significant of manufacturers' statements that helped shape DOE's understanding of potential impacts of an amended standard on the industry. Common issues raised by manufacturers in interviews included: the magnitude of conversion costs and the complexity and cost of retrofits.

Magnitude of Conversion Costs

Manufacturers stated in interviews that an increase in the stringency of energy conservation standards may cause them to face significant capital and product conversion costs to bring their equipment into compliance if DOE were to propose a standard that necessitates condensing technology. While all major CWH manufacturers currently produce condensing equipment, most also offer a wide range of non-condensing equipment that they stated is important in serving the replacement market. Manufacturers stated that eliminating non-condensing equipment would strand production assets and could result in manufacturers having to make capital investments in machinery and tooling to increase their condensing equipment production capacity.

Manufacturers also stated that shifting their entire product line to condensing equipment would require significant product conversion costs for R&D and testing. Most manufacturers currently offer a less diverse product line of condensing equipment, compared to their non-condensing equipment offerings. Several stated that in order to serve the replacement market and remain competitive, they would need to develop a range of sizes and capacities of condensing equipment that they currently only offer at non-condensing thermal efficiency levels. Manufacturers stated that this would require a substantial engineering effort.

Complexity and Cost of Retrofits

In interviews, several manufacturers pointed out that approximately 85 percent of CWH equipment sales are conducted in the replacement channel, rather than the new construction channel. They stated that the majority of the CWH market is structured around the legacy venting infrastructure designed for non-condensing equipment. Manufacturers stated that these venting systems are not designed to handle the acidic condensate that develops in condensing equipment. Manufacturers were concerned that commercial consumers would have to make expensive retrofits to install condensing products. According to manufacturers, this may result in commercial consumers repairing water heaters, rather than replacing them, which manufacturers argued would not save energy.

Impacts on Innovation

Manufacturers expressed concern that more-stringent energy conservation standards may stifle innovation in the industry by causing manufacturers to spend funds set aside for product innovation on compliance efforts instead. Several manufacturers pointed out that it is important for them to continually develop unique and innovative products in order to differentiate their brands in the market. They pointed out that it is difficult to accomplish this when engineering resources are diverted to focus on compliance with amended DOE standards. Manufacturers stated that this concern is particularly important for small manufacturers' ability to compete in the market. Small manufacturers generally have fewer resources to devote to compliance, and so may be at a disadvantage if DOE amends energy conservation standards.

K. Emission Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH_4 and N_2O, as well as the reductions to emissions of all species due to "upstream" activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion. The associated emissions are referred to as upstream emissions.

The analysis of power sector emissions uses marginal emissions factors calculated using a methodology based on results published for the *AEO 2015* Reference case and a set of side cases that implement a variety of efficiency-related policies. The methodology is described in chapter 15 of the NOPR TSD.

Combustion emissions of CH_4 and N_2O are estimated using emissions intensity factors published by the EPA, GHG Emissions Factors Hub.[100] The FFC upstream emissions are estimated based on the methodology described in chapter 15 of the NOPR TSD. The upstream emissions include both emissions from fuel combustion during extraction, processing, and transportation of fuel, and "fugitive" emissions (direct leakage to the atmosphere) of CH_4 and CO_2.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

For CH_4 and N_2O, DOE calculated emissions reduction in tons and also in terms of units of carbon dioxide equivalent (CO_2eq). Gases are converted to CO_2eq by multiplying the physical units by the gas's global warming potential (GWP) over a 100-year time horizon. Based on the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,[101] DOE used GWP values of 28 for CH_4 and 265 for N_2O.

Because the on-site operation of some CWH equipment requires use of fossil fuels and results in emissions of CO_2, NO_X, and SO_2 at the sites where these appliances are used, DOE also accounted for the reduction in these site emissions and the associated upstream emissions due to potential standards. Site emissions were estimated using emissions intensity factors from an EPA publication.[102]

The *AEO* incorporates the projected impacts of existing air quality regulations on emissions. *AEO 2015* generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available as of October 31, 2014. DOE's estimation of impacts accounts for the presence of the emissions control programs discussed in the following paragraphs.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (DC). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from 28 eastern States and DC were also limited under the Clean Air Interstate Rule (CAIR). 70 FR 25162 (May 12, 2005). CAIR created an allowance-based trading program that operates along with the Title IV program. In 2008, CAIR was remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit, but it remained in effect.[103] In 2011, EPA issued a replacement for CAIR, the Cross-State Air Pollution Rule (CSAPR). 76 FR 48208 (August 8, 2011). On August 21, 2012, the DC Circuit issued a decision to vacate CSAPR,[104] and the court ordered EPA to continue administering CAIR. On April 29, 2014, the U.S. Supreme Court reversed the judgment of the DC Circuit and remanded the case for further proceedings consistent with the Supreme Court's opinion.[105] On October 23, 2014, the DC Circuit lifted the stay of CSAPR.[106] Pursuant to this action, CSAPR went into effect (and CAIR ceased to be in effect) as of January 1, 2015. On July 28, 2015, the DC Circuit issued its opinion regarding CSAPR on remand from the Supreme Court. The court largely upheld CSAPR, but remanded to EPA without vacatur certain States' emissions budgets for reconsideration.[107]

EIA was not able to incorporate CSAPR into *AEO 2015*, so it assumes implementation of CAIR. Accordingly, DOE's analysis used emissions factors that assume that CAIR, not CSAPR, is the regulation in force. However, the difference between CAIR and CSAPR is not significant for the purpose of DOE's analysis of emissions impacts from energy conservation standards.

The attainment of emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by any regulated EGU. In past rulemakings, DOE recognized that there was uncertainty about the effects of efficiency standards on SO_2 emissions covered by the existing cap-and-trade system, but it concluded that negligible reductions in power sector SO_2 emissions would occur as a result of standards.

Beginning around 2016, however, SO_2 emissions will fall as a result of the Mercury and Air Toxics Standards (MATS) for power plants.[108] 77 FR 9304 (Feb. 16, 2012). In the final MATS rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions will be reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *AEO 2015* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2016. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Under the MATS, emissions will be far below the cap that would be established by CAIR, so it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by any regulated EGU. Therefore, DOE believes that energy conservation standards will reduce SO_2 emissions in 2016 and beyond.

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[100] Available at: *http://www.epa.gov/climateleadership/inventory/ghg-emissions.html.*

[101] IPCC (2013): *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. Chapter 8.

[102] U.S. Environmental Protection Agency, Compilation of Air Pollutant Emission Factors, AP–42, Fifth Edition, Volume I: Stationary Point and Area Sources (1998) (Available at: *http://www.epa.gov/ttn/chief/ap42/index.html*).

[103] See *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008); *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008).

[104] See *EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012), *cert. granted,* 81 U.S.L.W. 3567, 81 U.S.L.W. 3696, 81 U.S.L.W. 3702 (U.S. June 24, 2013) (No. 12–1182).

[105] *EPA* v. *EME Homer City Generation,* 134 S.Ct. 1584, 1610 (U.S. 2014). The Supreme Court held in part that EPA's methodology for quantifying emissions that must be eliminated in certain States due to their impacts in other downwind States was based on a permissible, workable, and equitable interpretation of the Clean Air Act provision that provides statutory authority for CSAPR.

[106] *EME Homer City Generation* v. *EPA,* Order (D. C. Cir. filed October 23, 2014) (No. 11–1302).

[107] *EME Homer City Generation, LP* v. *EPA 795 F.3d 118 (D.C. Cir. 2015).*

[108] DOE notes that on June 29, 2015, the U.S. Supreme Court ruled that the EPA erred when the agency concluded that cost did not need to be considered in the finding that regulation of hazardous air pollutants from coal- and oil-fired electric utility steam generating units is appropriate and necessary. Michigan v. Environmental Protection Agency, 576 U.S. ___ (2015). The Supreme Court did not vacate the MATS rule, and DOE has tentatively determined that the Court's decision on the MATS rule does not change the assumptions regarding the impact of energy conservation standards on SO_2 emissions (see chapter 13 of the NOPR TSD for further discussion). Further, the Court's decision does not change the impact of the energy conservation standards on mercury emissions. The EPA, in response to the U.S. Supreme Court's direction, has now considered cost in the appropriate and necessary finding. On November 20, 2015, the EPA proposed a supplemental finding that including a consideration of cost does not alter the EPA's previous determination that it is appropriate to regulate air toxics, including mercury, from power plants.

CAIR established a cap on NO_X emissions in 28 eastern States and the District of Columbia.[109] Energy conservation standards are expected to have little effect on NO_X emissions in those States covered by CAIR because excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other facilities. However, standards would be expected to reduce NO_X emissions in the States not affected by the caps, so DOE estimated NO_X emissions reductions from the standards considered in this NOPR for these States.

The MATS limit mercury emissions from power plants, but they do not include emissions caps, and as such, DOE's energy conservation standards would likely reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO 2015,* which incorporates MATS.

L. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this NOPR, DOE considered the estimated monetary benefits from the reduced emissions of CO_2 and NO_X that are expected to result from each of the TSLs considered. In order to make this calculation similar to the calculation of the NPV of commercial consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of equipment shipped in the forecast period for each TSL. This section summarizes the basis for the monetary values used for CO_2 and NO_X emissions and presents the values considered in this NOPR.

For this NOPR, DOE is relying on a set of values for the social cost of carbon (SCC) that was developed by an interagency process. A summary of the basis for those values is provided in the following subsection, and a more detailed description of the methodologies used is provided as an appendix to chapter 14 of the NOPR TSD.

1. Social Cost of Carbon

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of carbon dioxide. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in carbon dioxide emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b)(6) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), agencies must, to the extent permitted by law, assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed the SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

When attempting to assess the incremental economic impacts of carbon dioxide emissions, the analyst faces a number of challenges. A recent report from the National Research Council[110] points out that any assessment will suffer from uncertainty, speculation, and lack of information about: (1) Future emissions of greenhouse gases; (2) the effects of past and future emissions on the climate system; (3) the impact of changes in climate on the physical and biological environment; and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise questions of science, economics, and ethics and should be viewed as provisional.

Despite the limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing carbon dioxide emissions. The agency can estimate the benefits from reduced (or costs from increased) emissions in any future year by multiplying the change in emissions in that year by the SCC value appropriate for that year. The net present value of the benefits can then be calculated by multiplying the future benefits by an appropriate discount factor and summing across all affected years.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

b. Development of Social Cost of Carbon Values

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: Global SCC estimates for 2007 (in 2006$) of $55, $33, $19, $10, and $5 per metric ton of CO_2. These interim values represented the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules.

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[109] CSAPR also applies to NO_X, and it would supersede the regulation of NO_X under CAIR. As stated previously, the current analysis assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR with regard to DOE's analysis of NO_X emissions is slight.

[110] National Research Council, *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use,* National Academies Press: Washington, DC (2009).

c. Current Approach and Key Assumptions

After the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates. Specifically, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models commonly used to estimate the SCC: the FUND, DICE, and PAGE models. These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change (IPCC). Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models, while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: Climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

In 2010, the interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from three integrated assessment models, at discount rates of 2.5 percent, 3 percent, and 5 percent. The fourth set, which represents the 95th-percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from climate change further out in the tails of the SCC distribution. The values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects,[111] although preference is given to consideration of the global benefits of reducing CO_2 emissions. Table IV.38 presents the values in the 2010 interagency group report,[112] which is reproduced in appendix 14A of the NOPR TSD.

TABLE IV.38—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

[In 2007 dollars per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th Percentile
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

The SCC values used for this document were generated using the most recent versions of the three integrated assessment models that have been published in the peer-reviewed literature, as described in the 2013 update from the interagency working group (revised July 2015).[113] Table IV.39 shows the updated sets of SCC estimates from the latest interagency update in 5-year increments from 2010 to 2050. The full set of annual SCC values between 2010 and 2050 is reported in appendix 14B of the NOPR TSD. The central value that emerges is the average SCC across models at the 3-percent discount rate. However, for purposes of capturing the uncertainties involved in regulatory impact analysis, the interagency group emphasizes the importance of including all four sets of SCC values.

TABLE IV.39—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE (REVISED JULY 2015), 2010–2050

[In 2007 dollars per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th Percentile
2010	10	31	50	86

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[111] It is recognized that this calculation for domestic values is approximate, provisional, and highly speculative. There is no *a priori* reason why domestic benefits should be a constant fraction of net global damages over time.

[112] Interagency Working Group on Social Cost of Carbon, United States Government, *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866* (February 2010) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf*).

[113] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866*, Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised July 2015) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf*).

TABLE IV.39—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE (REVISED JULY 2015), 2010–2050—Continued

[In 2007 dollars per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th Percentile
2015	11	36	56	105
2020	12	42	62	123
2025	14	46	68	138
2030	16	50	73	152
2035	18	55	78	168
2040	21	60	84	183
2045	23	64	89	197
2050	26	69	95	212

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable since they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned above points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of analytical challenges that are being addressed by the research community, including research programs housed in many of the Federal agencies participating in the interagency process to estimate the SCC. The interagency group intends to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling. Although uncertainties remain, the revised estimates used for this NOPR are based on the best available scientific information on the impacts of climate change. The current estimates of the SCC have been developed over many years, and with input from the public. In November 2013, OMB announced a new opportunity for public comments on the interagency technical support document underlying the revised SCC estimates. 78 FR 70586 (Nov. 26, 2013). In July 2015, OMB published a detailed summary and formal response to the many comments that were received.[114] It also stated its intention to seek independent expert advice on opportunities to improve the estimates, including many of the approaches suggested by commenters. DOE stands ready to work with OMB and the other members of the interagency working group on further review and revision of the SCC estimates as appropriate.

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used the values from the 2013 interagency report (revised July 2015), adjusted to 2014$ using the gross domestic product (GDP) price deflator from the Bureau of Economic Analysis. For each of the four cases specified, the values used for emissions in 2015 were $12.2, $40.0, $62.3, and $117 per metric ton avoided (values expressed in 2014$). DOE derived values after 2050 using the relevant growth rates for the 2040–2050 period in the interagency update.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SCC value for that year in each of the four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

2. Social Cost of Other Air Pollutants

As noted previously, DOE has estimated how the considered energy conservation standards would reduce site NO_X emissions nationwide and decrease power sector NO_X emissions in those 22 States not affected by the CAIR.

DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, "Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants," published in June 2014 by EPA's Office of Air Quality Planning and Standards. The report includes high and low values for NO_X (as $PM_{2.5}$) for 2020, 2025, and 2030 discounted at 3 percent and 7 percent,[115] which are presented in chapter 14 of the NOPR TSD. DOE assigned values for 2021–2024 and 2026–2029 using, respectively, the values for 2020 and 2025. DOE assigned values after 2030 using the value for 2030.

DOE multiplied the emissions reduction (tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate. DOE will continue for evaluate the monetization of avoided NO_X emissions and will make any appropriate updates of the current analysis for the final rulemaking.

DOE is evaluating appropriate monetization of avoided SO_2 and Hg emissions in energy conservation standards rulemakings. DOE has not included monetization of those emissions in the current analysis.

M. Utility Impact Analysis

The utility impact analysis estimates several effects on the electric power generation industry that would result from the adoption of new or amended energy conservation standards. The utility impact analysis estimates the changes in installed electrical capacity and generation that would result for each TSL. The analysis is based on published output from NEMS, associated with *AEO 2015*. NEMS produces the *AEO* Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. DOE uses published side cases that incorporate efficiency-related policies to estimate the marginal impacts of reduced energy demand on the utility sector. These marginal factors are estimated based on the changes to electricity sector generation, installed capacity, fuel consumption and emissions in the *AEO* Reference case and various side cases. Details of the methodology are provided in the appendices to Chapters 13 and 15 of the NOPR TSD.

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[114] Available at: *https://www.whitehouse.gov/blog/2015/07/02/estimating-benefits-carbon-dioxide-emissions-reductions.*

[115] For the monetized NO_X benefits associated with $PM_{2.5}$, the related benefits (derived from benefit-per-ton values) are based on an estimate of premature mortality derived from the ACS study (Krewski et al. 2009), which is the lower of the two EPA central tendencies. Using the lower value is more conservative when making the policy decision concerning whether a particular standard level is economically justified so using the higher value would also be justified. If the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.* 2012), the values would be nearly two-and-a-half times larger. (See chapter 14 of the NOPR TSD for further description of the studies mentioned above.)

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity, and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of new or amended energy conservation standards.

N. Employment Impact Analysis

Employment impacts from new or amended energy conservation standards include direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the equipment subject to standards; the MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, due to: (1) Reduced spending by end users on energy; (2) reduced spending on new energy supply by the utility industry; (3) increased commercial consumer spending on the purchase of new equipment; and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS). BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[116] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing commercial consumer utility bills. Because reduced commercial consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.*, the utility sector) to more labor-intensive sectors (*e.g.*, the retail and service sectors). Thus, based on the BLS data alone, DOE tentatively concludes net national employment may increase because of shifts in economic activity resulting from amended energy conservation standards for CWH equipment.

For the amended standard levels considered in this NOPR, DOE estimated indirect national employment impacts using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 3.1.1 (ImSET).[117] ImSET is a special-purpose version of the "U.S. Benchmark National Input-Output" (I–O) model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among the 187 sectors. ImSET's national economic I–O structure is based on a 2002 U.S. benchmark table, specially aggregated to the 187 sectors most relevant to industrial, commercial, and residential building energy use. DOE notes that ImSET is not a general equilibrium forecasting model, and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run. For the NOPR, DOE used ImSET only to estimate short-term (through 2023) employment impacts.

For more details on the employment impact analysis, see chapter 16 of the NOPR TSD.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to potential amended energy conservation standards for the CWH equipment that is the subject of this rulemaking. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for CWH equipment, and the proposed standard levels that DOE sets forth in this NOPR. Additional details regarding DOE's analyses are contained in the TSD chapters supporting this document.

A. Trial Standard Levels

DOE developed trial standard levels (TSLs) that combine efficiency levels for each analyzed equipment class of CWH equipment. DOE developed TSLs so that each TSL is composed of energy efficiency levels from each equipment class that exhibit similar characteristics, such as efficiency, or meet certain economic criteria. For example, one of the TSLs consists of the max-tech efficiency levels from each equipment class being considered for this rulemaking. DOE attempted to limit the number of TSLs considered for the NOPR by only considering efficiency levels that exhibit significantly different economic and/or engineering characteristics from the efficiency levels already selected as a TSL. DOE developed TSLs that include efficiency levels for both thermal efficiency and standby loss because standby loss is dependent upon thermal efficiency. This dependence of standby loss on thermal efficiency is discussed in detail in section IV.C.3.b and chapter 5 of the NOPR TSD. DOE developed the efficiency levels for thermal efficiency and standby loss for each equipment class in each TSL that DOE has identified for CWH equipment, as described below and as presented in Table V.1.

TSL 4 consists of the max-tech efficiency levels. The efficiency levels in TSL 4 also provide the highest NPV using a 7-percent discount rate.

TSL 3 consists of intermediate condensing efficiency levels for each gas-fired equipment class with the exception of the residential-duty gas-fired storage water heater equipment class, which has a minimum condensing level. All equipment classes have positive life-cycle cost savings at TSL 3. For this TSL, DOE selected thermal efficiency levels closest to the current

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[116] See U.S. Department of Commerce, Bureau of Economic Analysis, *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II)* (1992).

[117] M. J. Scott, O. V. Livingston, P. J. Balducci, J. M. Roop, and R. W. Schultz, *ImSET 3.1: Impact of Sector Energy Technologies* (2009) Pacific Northwest National Laboratory: Report No. PNNL–18412 (Available at: *www.pnl.gov/main/publications/external/technical_reports/PNNL-18412.pdf*).

ENERGY STAR level[118] for commercial gas-fired storage water heaters and gas-fired instantaneous water heaters and hot water supply boilers. For this TSL, all selected standby loss levels maximize energy savings and have a positive NPV using a 7-percent discount rate.

TSL 2 consists of minimum condensing thermal efficiency levels for each gas-fired equipment class. For this TSL, all selected standby loss levels maximize both energy savings and NPV using a 7-percent discount rate.

TSL 1 consists of maximum non-condensing thermal efficiency levels for each gas-fired equipment class. For this TSL, all selected standby loss levels maximize energy savings and have a positive NPV using a 7-percent discount rate.

Table V.1 presents the efficiency levels for thermal efficiency and standby loss for each equipment class in each TSL that DOE has identified for CWH equipment. Table V.2 presents the thermal efficiency value and standby loss reduction factor for each equipment class in each TSL that DOE considered, with the exception of residential-duty gas-fired storage water heaters. The standby loss reduction factor is a multiplier representing the reduction in allowed standby loss relative to the current standby loss standard. For residential-duty gas-fired storage water heaters, DOE must set standards in terms of the uniform efficiency descriptor (UEF) metric established in the July 2014 final rule. 79 FR 40542, 40578–79 (July 11, 2014). Table V.3 presents the UEF equations for residential-duty gas-fired storage water heaters corresponding to each TSL that DOE considered, developed using the conversion factors proposed in the April 2015 NOPR. 80 FR 20116, 20143 (April 14, 2015).

TABLE V.1—TRIAL STANDARD LEVELS FOR CWH EQUIPMENT BY EFFICIENCY LEVEL

Equipment class	Trial standard level* **							
	1		2		3		4	
	E_t	SL	E_t	SL	E_t	SL	E_t	SL
Commercial gas-fired storage water heaters and storage-type instantaneous water heaters	1	2	2	2	4	2	5	2
Residential-duty gas-fired storage water heaters	1	3	2	1	2	1	4	1
Gas-fired instantaneous water heaters and hot water supply boilers:								
Tankless water heaters	2	....	3	....	4	....	5	....
Hot water supply boilers	2	....	3	....	4	....	5	....
Electric storage water heaters	....	1	....	1	....	1	....	1

* E_t stands for thermal efficiency, and SL stands for standby loss.

** As discussed in sections III.C.7 and III.C.8, DOE did not analyze amended energy conservations standards for standby loss of instantaneous water heaters and hot water supply boilers or for thermal efficiency of electric storage water heaters.

TABLE V.2—TRIAL STANDARD LEVELS FOR CWH EQUIPMENT BY THERMAL EFFICIENCY AND STANDBY LOSS REDUCTION FACTOR

[Except residential-duty gas-fired storage water heaters]

Equipment class	Trial standard level* **							
	1		2		3		4	
	E_t (%)	SL factor †	E_t (%)	SL factor †	E_t (%)	SL factor †	E_t (%)	SL factor †
Commercial gas-fired storage water heaters and storage-type instantaneous water heaters	82	0.72	90	0.67	95	0.63	99	0.61
Gas-fired instantaneous water heaters and hot water supply boilers:								
Tankless water heaters	84	....	92	....	94	....	96	....
Hot water supply boilers	84	....	92	....	94	....	96	....
Electric storage water heaters	....	0.84	....	0.84	....	0.84	....	0.84

* E_t stands for thermal efficiency, and SL stands for standby loss.

** As discussed in sections III.C.7 and III.C.8, DOE did not analyze amended energy conservations standards for standby loss of instantaneous water heaters and hot water supply boilers or for thermal efficiency of electric storage water heaters.

† Standby loss reduction factor is a factor that is multiplied by the current maximum standby loss equations for each equipment class, as applicable. DOE used reduction factors to develop the amended maximum standby loss equation for each TSL. These reduction factors and maximum standby loss equations are discussed in section IV.C.8.

TABLE V.3—TRIAL STANDARD LEVELS BY UEF FOR RESIDENTIAL-DUTY GAS-FIRED STORAGE WATER HEATERS

Draw pattern*	TSL 0	TSL 1	TSL 2	TSL 3	TSL 4
High	$0.6215-(0.0007 \times Vr)$	$0.6646-(0.0006 \times Vr)$	$0.7311-(0.0006 \times Vr)$	$0.7311-(0.0006 \times Vr)$	$0.7718-(0.0006 \times Vr)$

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[118] Chapter 3 of the NOPR TSD includes more detail on the ENERGY STAR program for commercial water heaters.

TABLE V.3—TRIAL STANDARD LEVELS BY UEF FOR RESIDENTIAL-DUTY GAS-FIRED STORAGE WATER HEATERS—Continued

Draw pattern *	TSL 0	TSL 1	TSL 2	TSL 3	TSL 4
Medium	0.5781 − (0.0009 × Vr)	0.6304 − (0.0007 × Vr)	0.6996 − (0.0007 × Vr)	0.6996 − (0.0007 × Vr)	0.7357 − (0.0008 × Vr)
Low	0.5316 − (0.0009 × Vr)	0.5915 − (0.0009 × Vr)	0.6626 − (0.0009 × Vr)	0.6626 − (0.0009 × Vr)	0.6939 − (0.0010 × Vr)
Very Small	0.3371 − (0.0007 × Vr)	0.3986 − (0.0009 × Vr)	0.4618 − (0.0010 × Vr)	0.4618 − (0.0010 × Vr)	0.4730 − (0.0011 × Vr)

* Draw pattern is a classification of hot water use of a consumer water heater or residential-duty commercial water heater, based upon the first-hour rating. The draw pattern is determined using the Uniform Test Method for Measuring the Energy Consumption of Water Heaters in in appendix E to subpart B of 10 CFR Part 430.

Note: TSL 0 represents the baseline, and Vr is rated volume in gallons.

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Commercial Consumers

DOE analyzed the economic impacts on CWH commercial consumers by looking at the effects potential amended standards would have on the LCC and PBP. DOE also examined the impacts of potential standards on commercial consumer subgroups. These analyses are discussed in the following subsections.

a. Life-Cycle Cost and Payback Period

To evaluate the net economic impact of potential amended energy conservation standards on commercial consumers of CWH equipment, DOE conducted LCC and PBP analyses for each TSL. In general, higher-efficiency equipment would affect commercial consumers in two ways: (1) Annual operating expenses would decrease, and (2) purchase price would increase. The results of the LCC analysis for each TSL were obtained by comparing the installed and operating costs of the equipment in the no-new-standards-case scenario (see section IV.F for a discussion of no-new-standards-case efficiency distribution) against the standards-case scenarios at each TSL. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* equipment price plus installation costs), operating expenses (*i.e.,* annual energy use, energy prices, energy price trends, repair costs, and maintenance costs), equipment lifetime, and discount rates.

The LCC analysis is carried out using Monte Carlo simulations. Consequently, the results of the LCC analysis are distributions covering a range of values, as opposed to a single deterministic value. DOE presents the mean values calculated from the distributions of results. The LCC analysis also provides information on the percentage of commercial consumers for whom an increase in the minimum efficiency standard would have a positive impact (net benefit), a negative impact (net cost), or no impact.

DOE also performed a PBP analysis as part of the LCC analysis. The PBP is the number of years it would take for the commercial consumer to recover the increased costs of higher-efficiency equipment as a result of energy savings based on the operating cost savings. The PBP is an economic benefit-cost measure that uses benefits and costs without discounting. Chapter 8 of the NOPR TSD provides detailed information on the LCC and PBP analyses.

As described in section IV.H of this document, DOE used a "roll-up" scenario in this rulemaking. Under the roll-up scenario, DOE assumes that the market shares of the efficiency levels in the no-new-standards case that do not meet the new or amended standard level under consideration would "roll up" into (meaning "be added to") the market share of the efficiency level at the standard level under consideration, and the market shares of efficiency levels that are above the standard level under consideration would remain unaffected. Commercial consumers in the no-new-standards-case scenario who buy the equipment at or above the TSL under consideration, would be unaffected if the standard were to be set at that TSL. Commercial consumers in the no-new-standards-case scenario who buy equipment below the TSL under consideration would be affected if the standard were to be set at that TSL. Among these affected commercial consumers, some may benefit from lower LCCs of the equipment, and some may incur net cost due to higher LCCs, depending on the inputs to the LCC analysis such as electricity prices, discount rates, installation costs, and markups.

DOE's LCC and PBP analyses provided key outputs for each efficiency level above the baseline for each equipment class, as reported in Table V.4 to Table V.15. Two tables are presented for each equipment class, with separate pairs of tables shown for tankless gas-fired water heaters and for gas-fired hot water supply boilers, two product groups within the class of gas-fired instantaneous water heaters and hot water supply boilers. LCC results for this class as a whole are also shown based on shipment weighting of both equipment groups. The first table in each pair presents the results of the LCC analysis by efficiency level and TSL and shows installed costs, first year's operating cost, lifetime operating cost, and mean LCC, as well as simple PBP. The second table presents the percentage of commercial consumers who experience a net cost, as well as the mean LCC savings for all commercial consumers.

Analysis of all equipment classes showed positive mean LCC savings values at TSL 4, the max-tech efficiency level. The percentage of consumers experiencing net cost at TSL 4 varied from 14 percent for electric storage water heaters to 36 percent for residential duty gas-fired storage water heaters.

For commercial gas-fired storage and residential-duty gas-fired storage water heaters, the trend is generally an increase in LCC savings from TSL 2 to 4, going from lowest to highest condensing efficiency level examined. Average LCC savings are positive at TSL 1 through TSL 4 for all equipment classes.

For commercial gas-fired storage water heaters, and gas-fired instantaneous water heaters and hot water supply boilers, TSL 2 showed positive mean LCC savings, with between 22 and 38 percent of commercial consumers showing negative LCC savings. For residential-duty gas-fired storage water heaters, 42 percent of consumers experienced net cost at TSL 2. TSL 1 showed positive LCC savings for all equipment classes.

The simple PBP values for TSLs 2 through 4 are generally less than 7 years, except for residential-duty gas-fired storage water heater class, which has a simple payback ranging from 10.2 to 11.9 years, depending on TSL. Analyzed payback periods for the equipment group of gas-fired tankless water heaters were immediate at TSL 2 through TSL 4, resulting from reduced venting costs that offset equipment cost increases, particularly in new construction. The PBP was less than the average lifetime in all cases.

TABLE V.4—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR COMMERCIAL GAS-FIRED STORAGE WATER HEATERS

TSL*	Thermal efficiency (E_t) (%)	Standby loss (SL) factor	Average costs (2014$)	Simple payback period (years)			
				Installed cost	First year's operating cost	Lifetime operating cost	LCC
0	80	1.00	4,316	2,225	20,011	24,327	....
1	82	0.72	4,581	2,156	19,378	23,959	3.8
2	90	0.67	5,467	2,023	18,149	23,615	5.7
3	95	0.63	5,537	1,944	17,415	22,952	4.3
4	99	0.61	5,624	1,883	16,863	22,488	3.8

* The results for each TSL are calculated assuming that all commercial consumers use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.

Note: TSL 0 represents the baseline.

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS-CASE EFFICIENCY DISTRIBUTION FOR COMMERCIAL GAS-FIRED STORAGE WATER HEATERS

TSL	Thermal efficiency (E_t) level	Standby loss (SL) factor	Life-cycle cost savings	
			Percentage of commercial consumers that experience a net cost	Average life-cycle cost savings* (2014$)
0	80	1.00	0	....
1	82	0.72	8	219
2	90	0.67	30	317
3	95	0.63	24	794
4	99	0.61	21	1,252

* The calculation includes commercial consumers with zero LCC savings (no impact).

Note: TSL 0 represents the baseline.

TABLE V.6—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR RESIDENTIAL-DUTY GAS-FIRED STORAGE WATER HEATERS

TSL*	UEF	Average costs (2014$)	Simple payback period (years)			
			Installed cost	First year's operating cost	Lifetime operating cost	LCC
0	0.57	2,090	1,252	13,066	15,156	....
1	0.62	2,528	1,210	12,609	15,136	10.5
2, 3	0.69	3,361	1,145	11,886	15,248	11.9
4	0.73	3,669	1,096	11,361	15,030	10.2

* The results for each TSL are calculated assuming all commercial consumers use equipment with that efficiency level. The PBP is measured relative to the baseline equipment. UEF values are for the representative model.

Note: TSL 0 represents the baseline.

TABLE V.7—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS-CASE EFFICIENCY DISTRIBUTION FOR RESIDENTIAL-DUTY GAS-FIRED STORAGE WATER HEATERS

TSL	UEF	Life-cycle cost savings*	
		Percentage of commercial consumers that experience a net cost	Average life-cycle cost savings** (2014$)
0	0.57	0	....
1	0.62	32	537
2, 3	0.69	42	14

TABLE V.7—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS-CASE EFFICIENCY DISTRIBUTION FOR RESIDENTIAL-DUTY GAS-FIRED STORAGE WATER HEATERS—Continued

TSL	UEF	Life-cycle cost savings*	
		Percentage of commercial consumers that experience a net cost	Average life-cycle cost savings** (2014$)
4	0.73	36	241

* A value in parentheses is a negative number.
** The calculation includes commercial consumers with zero LCC savings (no impact).
Note: UEF values are for the representative model.
TSL 0 represents the baseline.

TABLE V.8—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR GAS-FIRED TANKLESS WATER HEATERS

TSL*	Thermal efficiency (E_t) (%)	Average costs (2014$)				Simple payback period years
		Installed cost	First year's operating cost	Lifetime operating cost	LCC	
0	80	4,273	690	9,607	13,880	
1	84	4,337	668	9,283	13,620	2.9
2	92	3,819	622	8,628	12,447	Immediate.
3	94	3,849	611	8,474	12,322	Immediate.
4	96	3,884	600	8,325	12,209	Immediate.

* The results for each TSL are calculated assuming that all commercial consumers use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.
Note: Immediate payback can result from a decrease in installation cost that is greater than the incremental increase in equipment cost.
TSL 0 represents the baseline.

TABLE V.9—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS-CASE EFFICIENCY DISTRIBUTION FOR GAS-FIRED TANKLESS WATER HEATERS

TSL	Thermal efficiency (E_t) (%)	Life-cycle cost savings	
		Percentage of commercial consumers that experience a net cost	Average life-cycle cost savings* (2014$)
0	80	0	....
1	84	11	86
2	92	38	1,009
3	94	35	1,119
4	96	33	1,224

* The calculation includes commercial consumers with zero LCC savings (no impact).
Note: TSL 0 represents the baseline.

TABLE V.10—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR GAS-FIRED HOT WATER SUPPLY BOILERS

TSL*	Thermal efficiency (E_t) (%)	Average costs (2014$)				Simple payback period (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC	
0	80	7,372	3,990	74,284	81,656	....
1	84	7,961	3,828	71,216	79,178	3.6
2	92	10,113	3,579	65,754	75,867	6.7
3	94	10,433	3,514	64,516	74,949	6.4
4	96	10,754	3,452	63,325	74,079	6.3

* The results for each TSL are calculated assuming that all commercial consumers use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.
Note: TSL 0 represents the baseline.

TABLE V.11—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS-CASE EFFICIENCY DISTRIBUTION FOR GAS-FIRED HOT WATER SUPPLY BOILERS

TSL	Thermal efficiency (E_t) (%)	Life-cycle cost savings	
		Percentage of commercial consumers that experience a net cost	Average life-cycle cost savings* (2014$)
0	80	0	
1	84	15	1,245
2	92	22	3,794
3	94	22	4,528
4	96	24	5,285

* The calculation includes commercial consumers with zero LCC savings (no impact).
Note: TSL 0 represents the baseline.

TABLE V.12—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR GAS-FIRED INSTANTANEOUS WATER HEATERS AND HOT WATER SUPPLY BOILERS*

TSL**	Thermal efficiency (E_t) (%)	Average costs (2014$)				Simple payback period (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC	
0	80	6,427	2,984	54,556	60,983	
1	84	6,856	2,864	52,325	59,181	3.6
2	92	8,193	2,677	48,330	56,523	5.8
3	94	8,425	2,629	47,422	55,846	5.6
4	96	8,658	2,582	46,549	55,207	5.6

* This table shows results for the gas-fired instantaneous water heaters and hot water supply boilers equipment class (*i.e.,* both tankless water heaters and hot water supply boilers), and reflects a weighted average result of Tables V.8 and V.10.
** The results for each TSL are calculated assuming that all commercial consumers use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.
Note: TSL 0 represents the baseline.

TABLE V.13—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS-CASE EFFICIENCY DISTRIBUTION FOR GAS-FIRED INSTANTANEOUS WATER HEATERS AND HOT WATER SUPPLY BOILERS*

TSL	Thermal efficiency (E_t) (%)	Life-cycle cost savings	
		Percentage of commercial consumers that experience a net cost	Average life-cycle cost savings** (2014$)
0	80	0	
1	84	14	891
2	92	27	2,944
3	94	26	3,488
4	96	27	4,046

* This table shows results for the gas-fired instantaneous water heaters and hot water supply boilers equipment class (*i.e.,* both tankless water heaters and hot water supply boilers), and reflects a weighted average result of Tables V.9 and V.11.
** The calculation includes commercial consumers with zero LCC savings (no impact).
Note: TSL 0 represents the baseline.

TABLE V.14—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR ELECTRIC STORAGE WATER HEATERS

TSL*	Standby loss (SL) factor	Average costs (2014$)				Simple payback period (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC	
0	1.00	3,649	1,743	17,094	20,743	
1, 2, 3, 4	0.84	3,743	1,728	16,952	20,694	6.5

* The results for each TSL are calculated assuming that all commercial consumers use equipment with that efficiency level. The PBP is measured relative to the baseline equipment.
Note: TSL 0 represents the baseline.

TABLE V.15—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS-CASE EFFICIENCY DISTRIBUTION FOR ELECTRIC STORAGE WATER HEATERS

TSL	Standby loss (SL) level	Life-cycle cost savings	
		Percentage of commercial consumers that experience a net cost	Average life-cycle cost savings* (2014$)
0	1.00	0	
1, 2, 3, 4	0.84	14	47

*The calculation includes commercial consumers with zero LCC savings (no impact).
Note: TSL 0 represents the baseline.

b. Life-Cycle Cost Subgroup Analysis

As described in section IV.I, DOE estimated the impact of amended energy conservation standards for commercial water heating equipment. Using the LCC spreadsheet model, DOE estimated the impacts of the TSLs on the following commercial consumer subgroups: Low-income residential population (0–20 percent percentile gross annual household income) and small businesses. DOE estimated the average LCC savings and PBP for the low-income subgroup compared with average CWH commercial consumers, as shown in Table V.16 through Table V.21. DOE also estimated LCC savings and PBP for small businesses, presenting the results in Table V.16 through Table V.21.

The results of the life-cycle cost subgroup analysis indicate that for CWH equipment, the low-income residential subgroup in general had a slightly higher LCC savings when compared to the general commercial consumer population, due in part to greater hot water use than the average commercial consumer for all equipment classes with the exception of residential-duty. However, for both residential-duty gas-fired commercial storage water heaters and for tankless water heating equipment, the low-income residential subgroup analyzed had somewhat lower hot water usage than the average commercial consumer of this equipment, which contributed to lower LCC savings for some TSLs. In particular, the low-income residential subgroup for the Residential-Duty Low-Income Gas-Fired Storage Water Heaters equipment class at TSL 2/3 would experience negative LCC savings and an associated payback period longer than the estimated 12 year lifetime of the product. DOE requests comment on any potential impacts of the estimated increased costs of the proposed standards on the low-income residential subgroup and whether this would impact the rate of replacement of the existing products due to low-income consumers choosing to repair as opposed to replace their water heater. In addition, DOE requests comment on the assumptions used in the LCC and PBP analysis such as the estimated installation costs of $3,361, which includes all applicable costs and markups for this equipment class. DOE also requests comment on the potential for product switching from either smaller Residential (>55 gallon, ≤75,000 Btu/h) or larger commercial (>105,000 Btu/h) gas storage hot water heaters to the Residential-Duty Gas-Fired Storage Water Heaters (>75,000 Btu/h and ≤105,000 Btu/h) equipment class if the agency were to adopt a less costly alternative for the Residential-Duty Gas-Fired Storage Water Heaters equipment class.

For the small business subgroups, the LCC savings were consistently lower than those of the average commercial consumer. Chapter 11 of the NOPR TSD provides more detailed discussion on the LCC subgroup analysis and results.

TABLE V.16—COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS WITH ALL CONSUMERS, COMMERCIAL GAS-FIRED STORAGE WATER HEATERS

TSL	Thermal efficiency (E_t) (%)	Standby loss (SL) factor	LCC savings (2014$)*			Simple payback period (years)		
			Residential low-income	Commercial small business	All	Residential low-income	Commercial small business	All
1	82	0.72	345	179	219	3.2	3.8	3.8
2	90	0.67	731	243	317	4.7	5.5	5.7
3	95	0.63	1,399	679	794	3.5	4.2	4.3
4	99	0.61	2,046	1,093	1,252	3.1	3.7	3.8

*Parentheses indicate negative values.

Table V.17—Comparison of Impacts for Consumer Subgroups With All Consumers, Residential-Duty Gas-Fired Storage Water Heaters

TSL	UEF	LCC savings (2014$) *			Simple payback period (years)		
		Residential low-income	Commercial small business	All	Residential low-income	Commercial small business	All
1	0.62	587	467	537	9.8	10.5	10.5
2, 3	0.69	(17)	48	14	12.4	10.1	11.9
4	0.73	251	250	241	10.4	8.7	10.2

* Parentheses indicate negative values.

Table V.18—Comparison of Impacts for Consumer Subgroups With All Consumers, Gas-Fired Tankless Water Heaters

TSL	Thermal efficiency (E_t) (%)	LCC savings (2014$) *			Simple payback period (years)		
		Residential low-income	Commercial small business	All	Residential low-income	Commercial small business	All
1	84	94	62	86	2.9	3.1	2.9
2	92	748	1,036	1,009	Immediate	Immediate	Immediate.
3	94	869	1,121	1,119	Immediate	Immediate	Immediate.
4	96	985	1,199	1,224	Immediate	Immediate	Immediate.

* Parentheses indicate negative values.
Note: Immediate payback can result from a decrease in installation cost that is greater than the incremental increase in equipment cost.

Table V.19—Comparison of Impacts for Consumer Subgroups With All Consumers, Gas-Fired Hot Water Supply Boilers

TSL	Thermal efficiency (E_t) (%)	LCC savings (2014$) *			Simple payback period (years)		
		Residential low-income	Commercial small business	All	Residential low-income	Commercial small business	All
1	84	2,937	401	1,245	2.1	6.4	3.6
2	92	9,568	761	3,794	4.1	12.2	6.7
3	94	11,302	979	4,528	4.0	11.7	6.4
4	96	13,101	1,192	5,285	3.8	11.4	6.3

* Parentheses indicate negative values.

Table V.20—Comparison of Impacts for Consumer Subgroups With All Consumers, Gas-Fired Instantaneous Water Heaters and Hot Water Supply Boilers *

TSL	Thermal efficiency (E_t) (%)	LCC savings (2014$) *			Simple payback period (years)		
		Residential low-income	Commercial small business	All	Residential low-income	Commercial small business	All
1	84	2,070	298	891	2.1	6.1	3.6
2	92	6,878	845	2,944	3.9	9.7	5.8
3	94	8,120	1,022	3,488	3.8	9.5	5.6
4	96	9,406	1,195	4,046	3.7	9.3	5.6

* This table shows results for the gas-fired instantaneous water heaters and hot water supply boilers equipment class (*i.e.*, both tankless water heaters and hot water supply boilers), and reflects a weighted average result of Tables V.18 and V.19.
** Parentheses indicate negative values.

TABLE V.21—COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS WITH ALL CONSUMERS, ELECTRIC STORAGE WATER HEATERS

TSL	Standby loss (SL) factor	LCC savings (2014$) *			Simple payback period (years)		
		Residential low-income	Commercial small business	All	Residential low-income	Commercial small business	All
1,2,3,4	0.84	87	26	47	5.5	6.9	6.5

* Parentheses indicate negative values.

c. Rebuttable Presumption Payback

As discussed in section III.F.2, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. Accordingly, DOE calculated a rebuttable presumption payback period for each TSL for commercial water heating equipment using average installed cost to the commercial consumer and first-year energy savings. However, DOE routinely conducts a full economic analysis that considers the full range of impacts, including those to the commercial consumer, manufacturer, Nation, and environment, as required by EPCA under 42 U.S.C. 6313(a)(6)(B)(ii) and (C)(i). The results of this more detailed analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification. Table V.22 shows the rebuttable presumption payback periods for each CWH equipment class by TSL level. Rebuttable payback periods were greater than 3 years for all CWH equipment except the tankless water heaters subclass. Tankless water heaters had rebuttable presumption payback periods of less than 3 years at all TSL levels.

TABLE V.22—REBUTTABLE PRESUMPTION PAYBACK PERIODS FOR COMMERCIAL WATER HEATING EQUIPMENT CLASSES

Equipment class	Rebuttable presumption payback (years)			
	TSL 1	TSL 2	TSL 3	TSL 4
Gas-fired storage water heaters and storage-type instantaneous water heaters.	3.8	5.6	4.2	3.7.
Residential-duty gas-fired storage water heaters	10.5	11.3	11.3	9.6.
Gas-fired instantaneous water heaters and hot water supply boilers	3.4	5.1	5.0	5.0.
Tankless water heaters	2.3	Immediate	Immediate	Immediate.
Hot water supply boilers	3.5	5.9	5.8	5.7.
Electric storage water heaters	6.5	6.5	6.5	6.5.

Note: Immediate payback can result from a decrease in installation cost that is greater than the incremental increase in equipment cost.

2. Economic Impact on Manufacturers

As noted previously, DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of CWH equipment. The following section describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the NOPR TSD explains the analysis in further detail.

a. Industry Cash-Flow Analysis Results

Table V.23 and Table V.24 depict the estimated financial impacts (represented by changes in INPV) of amended energy conservation standards on CWH equipment manufacturers, as well as the conversion costs that DOE expects manufacturers would incur for all equipment classes at each TSL. To evaluate the range of cash-flow impacts on the CWH industry, DOE modeled two markup scenarios using different assumptions that correspond to the range of anticipated market responses to amended energy conservation standards: (1) The preservation of gross margin percentage markup scenario; and (2) the preservation of per-unit operating profit markup scenario. Each of these scenarios is discussed immediately below.

To assess the less severe end of the range of potential impacts, DOE modeled a preservation of gross margin percentage markup scenario, in which a uniform "gross margin percentage" markup is applied across all potential efficiency levels. In this scenario, DOE assumed that a manufacturer's absolute dollar markup would increase as production costs increase in the standards case.

To assess the more severe end of the range of potential impacts, DOE modeled the preservation of per-unit operating profit markup scenario, which assumes that manufacturers would not be able to generate greater operating profit on a per-unit basis in the standards case as compared to the no-new-standards case. Rather, as manufacturers make the necessary investments required to convert their facilities to produce new standards-compliant equipment and incur higher costs of goods sold, their percentage markup decreases. Operating profit does not change in absolute dollars and decreases as a percentage of revenue.

As noted in the MIA methodology discussion (see section IV.J.2), in addition to markup scenarios, the MPCs, shipments, and conversion cost assumptions also affect INPV results.

The results in Table V.23 and Table V.24 show potential INPV impacts for CWH equipment manufacturers. Table V.23 reflects the less severe set of potential impacts, and Table V.24 represents the more severe set of potential impacts. In the following discussion, the INPV results refer to the difference in industry value between the no-new-standards case and each standards case that results from the sum of discounted cash flows from the base year 2015 through 2048, the end of the analysis period.

To provide perspective on the short-run cash flow impact, DOE discusses the change in free cash flow between the no-new-standards case and the standards case at each TSL in the year before new standards take effect. These figures provide an understanding of the magnitude of the required conversion costs at each TSL relative to the cash flow generated by the industry in the no-new-standards case.

TABLE V.23—MANUFACTURER IMPACT ANALYSIS RESULTS—PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO *

	Units	No-new-standards case	Trial standard level			
			1	2	3	4
INPV	*2014$ millions*	176.2	177.4	187.8	185.0	166.6
Change in INPV	*2014$ millions*		1.2	11.6	8.8	(9.7)
	%		0.7	6.6	5.0	(5.5)
Free Cash Flow (2018)	*2014$ millions*	12.8	10.9	5.6	2.5	(10.2)
Change in Free Cash Flow	*2014$ millions*		(2.0)	(7.3)	(10.3)	(23.1)
	%		(15.5)	(56.7)	(80.4)	(179.8)
Product Conversion Costs	*2014$ millions*		3.6	12.5	18.1	48.2
Capital Conversion Costs	*2014$ millions*		2.2	8.4	11.7	21.3
Total Conversion Costs	*2014$ millions*		5.8	20.9	29.8	69.6

* Parentheses indicate negative values.

TABLE V.24—MANUFACTURER IMPACT ANALYSIS RESULTS—PRESERVATION OF PER-UNIT OPERATING PROFIT MARKUP SCENARIO *

	Units	No-new-standards case	Trial standard level			
			1	2	3	4
INPV	*2014$ millions*	176.2	171.5	158.8	152.8	128.6
Change in INPV	*2014$ millions*		(4.7)	(17.4)	(23.4)	(47.6)
	%		(2.7)	(9.9)	(13.3)	(27.0)
Free Cash Flow (2018)	*2014$ millions*	12.8	10.9	5.6	2.5	(10.2)
Change in Free Cash Flow	*2014$ millions*		(2.0)	(7.3)	(10.3)	(23.1)
	%		(15.5)	(56.7)	(80.4)	(179.8)
Product Conversion Costs	*2014$ millions*		3.6	12.5	18.1	48.2
Capital Conversion Costs	*2014$ millions*		2.2	8.4	11.7	21.3
Total Conversion Costs	*2014$ millions*		5.8	20.9	29.8	69.6

* Parentheses indicate negative values.

At TSL 1, DOE estimates impacts on INPV for CWH equipment manufacturers to range from −2.7 percent to 0.7 percent, or a change of −$4.7 million to $1.2 million. At this level, DOE estimates that industry free cash flow would decrease by approximately 15.5 percent to $10.9 million, compared to the no-new-standards-case value of $12.8 million in the year before compliance (2018).

DOE estimates that in the year of compliance (2019), 27 percent of CWH shipments in the no-new-standards case would already meet or exceed the thermal efficiency and standby loss standards at TSL 1. At this level, DOE expects CWH equipment manufacturers to incur $3.6 million in product conversion costs to redesign and test their equipment. DOE does not expect the modest increases in thermal efficiency standards at this TSL to require major equipment redesigns or capital investments. However, DOE expects manufacturers to incur approximately $2.2 million in capital conversion costs in order to comply with the proposed standby loss levels at this TSL. DOE expects manufacturers will incur these costs to purchase new tooling for the machinery used to make the jackets for storage water heaters, which would need to expand to enclose a thicker tank insulation layer.

At TSL 1, under the preservation of gross margin percentage scenario, the shipment-weighted average price per unit increases by 4.5 percent relative to the no-new-standards-case price per unit in the year of compliance (2019). In this scenario, manufacturers are able to fully pass on this cost increase to commercial consumers. This slight price increase would mitigate the $5.8 million in total conversion costs estimated at TSL 1, resulting in slightly positive INPV impacts at TSL 1 under this scenario. Under the preservation of per-unit operating profit markup scenario, manufacturers earn the same operating profit as would be earned in the no-new-standards case, but do not earn additional profit from their investments. A weighted-average price increase of 4.1 percent in this scenario is outweighed by the expected $5.8 million in total conversion costs, resulting in slightly negative impacts at TSL 1.

At TSL 2, DOE estimates impacts on INPV for CWH manufacturers to range from −9.9 percent to 6.6 percent, or a change in INPV of −$17.4 million to $11.6 million. At this potential standard level, industry free cash flow would decrease by approximately 56.7 percent to $5.6 million, compared to the base-case value of $12.8 million in the year before compliance (2018).

DOE estimates that in the year of compliance (2019), 19 percent of CWH shipments in the no-new-standards case would already meet or exceed the thermal efficiency and standby loss standards at TSL 2. DOE estimates that conversion costs would increase significantly at this TSL because manufacturers would meet these thermal efficiency levels for gas-fired CWH equipment classes by using condensing technology, which significantly changes the equipment design. DOE estimates that most of these costs would be driven by commercial and residential-duty commercial gas-fired storage water heaters and gas-fired hot water supply boilers. DOE acknowledges that different manufacturers would likely make different investments in order to meet these thermal efficiency levels, because condensing heat exchanger designs vary from manufacturer to manufacturer. Manufacturers of gas-fired storage water heaters that use helical condensing heat exchanger designs may have to increase their tube-bending capacity to increase their production capacity of condensing heat exchangers, as would be required by a condensing standard. Other manufacturers may have to invest to increase their welding capacity. Additionally, manufacturers could incur capital costs for new press dies to form the holes for flue pipes in the top and bottom bells of storage water heaters. DOE estimated that manufacturers of the instantaneous CWH equipment classes would likely incur low capital conversion costs at this TSL. DOE assumes that tankless water heater manufacturers produce far more residential products than commercial products and that these products are manufactured in the same facilities with shared equipment. Therefore, DOE has tentatively concluded that increased production of condensing commercial tankless water heaters would not require high conversion costs because many more condensing residential tankless water heaters are already made. For hot water supply boilers, DOE assumes that manufacturers would likely choose to purchase condensing heat exchangers rather than design and manufacture them. While this shift to a purchased heat exchanger might affect the vertically-integrated structure of the manufacturer, DOE does not believe it would lead to high conversion costs. Overall, DOE estimates that manufacturers would incur $12.5 million in product conversion costs and $8.4 million in capital conversion costs to bring their CWH equipment portfolios into compliance with a standard set to TSL 2.

At TSL 2, under the preservation of gross margin percentage scenario, the shipment-weighted average price per unit increases by 20.9 percent relative to the no-new-standards-case price per unit in the year of compliance (2019). In this scenario, INPV impacts are positive because manufacturers' ability to pass higher production costs onto commercial consumers outweighs the $20.9 million in expected total conversion costs. However, under the preservation of per-unit operating profit markup scenario, a lower markup means the weighted average price per unit increases by only 18.9 percent compared to the no-new-standards case price per unit in the year of compliance (2019). In this case, conversion costs outweigh the gain in weighted average price per unit, resulting in moderately negative impacts at TSL 2.

At TSL 3, DOE estimates impacts on INPV for CWH manufacturers to range from −13.3 percent to 5.0 percent, or a change in INPV of −$23.4 million to $8.8 million. At this potential standard level, DOE estimates industry free cash flow would decrease by approximately 80.4 percent to $2.5 million compared to the no-new-standards-case value of $12.8 million in the year before compliance (2018).

The impacts on INPV at TSL 3 are slightly more negative than at TSL 2. DOE estimates that in the year of compliance (2019), 16 percent of CWH shipments in the no-new-standards case would meet or exceed the thermal efficiency and standby loss standards at TSL 3. At this level, DOE estimates that product conversion costs would increase as manufacturers would have to redesign a larger percentage of their offerings to meet the higher thermal efficiency levels, which would require increased engineering resources. Additionally, capital conversion costs would increase as manufacturers may have to upgrade their laboratories and test facilities to increase capacity for research, development, and testing for their gas-fired storage water heater offerings. Overall, DOE estimates that manufacturers would incur $18.1 million in product conversion costs and $11.7 million in capital conversion costs to bring their CWH equipment portfolios into compliance with a standard set to TSL 3.

At TSL 3, under the preservation of gross margin percentage markup scenario, the shipment-weighted average price per unit in the year of compliance (2019) increases by 23.1 percent relative to the no-new-standards case price per unit. In this scenario, INPV impacts are positive because manufacturers' ability to pass higher production costs onto commercial consumers outweighs the $29.8 million in total conversion costs. However, under the preservation of per-unit operating profit markup scenario, a lower markup means the weighted average price per unit increases by only 20.9 percent compared to the no-new-standards case price per unit in the year of compliance (2019). In this case, conversion costs outweigh the gain in weighted average price per unit, resulting in moderately negative impacts at TSL 3.

TSL 4 represents the max-tech thermal efficiency and standby loss levels for all equipment classes analyzed. At TSL 4, DOE estimates impacts on INPV for CWH equipment manufacturers to range from −27.0 percent to −5.5 percent, or a change in INPV of −$47.6 million to −$9.7 million. At this TSL, DOE estimates industry free cash flow in the year before compliance (2018) would decrease by approximately 179.8 percent to −$10.2 million compared to the no-new-standards case value of $12.8 million.

The impacts on INPV at TSL 4 are negative under both markup scenarios. DOE estimates that in 2019, only 4 percent of CWH equipment shipments would already meet or exceed the efficiency levels prescribed at TSL 4. DOE expects conversion costs to continue to increase at TSL 4, as almost all equipment on the market would have to be redesigned and many new products would have to be developed. DOE estimates that product conversion costs would increase to $48.2 million, as manufacturers would have to redesign a larger percentage of their offerings to meet max-tech for all classes. In particular, manufacturers of commercial gas-fired storage water heaters would need to extensively redesign almost all of their product offerings. This extensive redesign would likely include many rounds of research and development and testing across most equipment platforms. DOE estimates that manufacturers would also incur $21.3 million in capital conversion costs. In addition to upgrading production lines, DOE has tentatively concluded that manufacturers would likely be required to make extensive modifications and upgrades to their laboratories and possibly add laboratory space in order to develop and test products that meet max-tech efficiency levels, particularly for commercial gas-fired storage water heaters.

At TSL 4, under the preservation of gross margin percentage markup scenario, the shipment-weighted average price per unit in the year of compliance (2019) increases by 27.1 percent relative to the no-new-standards case price per unit. In this scenario, INPV impacts are negative because manufacturers' ability to pass higher production costs onto consumers is outweighed by the $69.6 million in total conversion costs. Under the preservation of per-unit operating profit markup scenario, a lower markup means the weighted-average price per unit increases by only 24.5 percent compared to the no-new-standards case price per unit in the year of compliance (2019). In this case, conversion costs outweigh the gain in weighted-average price per unit, resulting in significantly negative impacts at TSL 4.

b. Impacts on Direct Employment

To quantitatively assess the impacts of energy conservation standards on direct employment in the CWH industry, DOE used the GRIM to estimate the domestic labor expenditures and number of employees in the no-new-standards case and at each TSL in 2019. DOE used statistical data from the U.S. Census Bureau's 2013 Annual Survey of Manufacturers (ASM),[119] the results of the engineering analysis, and interviews with manufacturers to determine the inputs necessary to calculate industry-wide labor expenditures and domestic employment levels. Labor expenditures related to manufacturing of the product are a function of the labor intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in each year are calculated by multiplying the MPCs by the labor percentage of MPCs.

The total labor expenditures in the GRIM are converted to domestic production employment levels by dividing production labor expenditures by the annual payment per production worker (production worker hours times the labor rate found in the U.S. Census Bureau's 2013 ASM). The estimates of production workers in this section cover workers, including line-supervisors who are directly involved in fabricating and assembling a product within the manufacturing facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also included as production labor. DOE's estimates only account for production workers who manufacture the specific products covered by this rulemaking. The total direct employment impacts calculated in the GRIM are the sum of the changes in the number of production workers resulting from the amended energy conservation standards for CWH equipment, as compared to the no-new-standards case.

To estimate an upper bound to direct employment under amended standards, DOE assumes all domestic manufacturers would choose to continue producing CWH equipment in the United States and would not move production to foreign countries. To estimate a lower bound to direct employment under amended standards, DOE considers a case where some manufacturers choose to relocate some production overseas rather than make the necessary conversions at domestic production facilities. To establish the lower bound employment under amended standards, DOE estimated the maximum potential job loss due to manufacturers either leaving the industry or moving production to foreign locations as a result of amended standards. Due to shipping costs, most manufacturers agreed that more-stringent energy conservation standards for CWH equipment would probably not push their production overseas. Some manufacturers stated that producing higher-efficiency equipment is generally a more labor-intensive process and may cause them to hire additional production employees. They also noted, however, that higher efficiency standards could potentially shift the production of some of the value content of CWH equipment overseas, causing U.S. manufacturers to become less vertically integrated. In particular, manufacturers of hot water supply boilers could choose to source condensing heat exchangers, most of which are made overseas, rather than manufacture them at domestic production facilities.

DOE estimates that 90 percent of CWH equipment sold in the United States is currently manufactured domestically. In the absence of amended energy conservation standards, DOE estimates that there would be 377 domestic production workers in the CWH industry in 2019, the year of compliance. Table V.25 presents the range of potential impacts of amended energy conservation standards on U.S. production workers of CWH equipment.

TABLE V.25—POTENTIAL CHANGES IN THE TOTAL NUMBER OF CWH EQUIPMENT PRODUCTION WORKERS IN 2019

Worker estimates	No new standard	Trial standard level			
		1	2	3	4
Total Number of Domestic Production Workers (2019)	377	389 to 241	406 to 212	408 to 199	416 to 153
Potential Changes in Domestic Production Workers (2019)		12 to (136)	29 to (165)	31 to (178)	39 to (224)

* Numbers in parentheses indicate negative numbers.

At the upper end of the range, all examined TSLs show positive impacts on domestic employment levels. Producing more-efficient CWH equipment tends to require more labor, and DOE estimates that if CWH equipment manufacturers chose to keep their current production in the United States, domestic employment could increase at each TSL. In interviews, several manufacturers that produce high-efficiency CWH equipment stated that a standard that went to condensing levels could cause them to hire more employees to increase their production capacity. Others stated that a condensing standard would require additional engineers to redesign CWH equipment and production processes.

Regarding potential negative impacts on domestic direct employment, DOE does not expect significant changes at TSL 1. Most manufacturers agreed that these efficiency levels would require minimal changes to their production processes and that most employees would be retained. DOE estimates that there could be a more significant loss of domestic employment at TSLs 2, 3, and 4 due to the fact that these TSLs require condensing technology for gas-fired equipment classes. The lower bound of employment under amended standards assumes manufacturers choose to lay off some employees who work on their lower-efficiency, commodity products. At these TSLs, CWH manufacturers could also choose to source more components from overseas, limiting their need for production employees. To derive the lower bound of direct employment under amended standards, DOE estimated the percentage of CWH models that manufacturers would have to redesign at each TSL and assumed domestic direct employment in the industry would decline by an equal proportion. This is intended to serve as a conservative assumption and represents the lower bound of a range of potential direct employment levels in the CWH industry under amended standards.

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[119] U.S. Census Bureau, Annual Survey of Manufacturers: General Statistics: Statistics for Industry Groups and Industries (2013) (Available at *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ASM_2013_31GS101&prodType=table*).

DOE notes that the employment impacts discussed here are independent of the indirect employment impacts to the broader U.S. economy, which are documented in chapter 15 of the NOPR TSD.

Issue 32: DOE seeks comment on its assessment of amended standards' potential impacts on direct employment.

c. Impacts on Manufacturing Capacity

Based on manufacturer feedback, DOE estimates that the average CWH equipment manufacturer's current production is running at approximately 60-percent capacity. Most manufacturers stated in interviews that they generally did not anticipate production capacity constraints associated with this rulemaking. Some noted that condensing equipment is generally more labor-intensive and takes longer to build; however, most agreed they could increase capacity by implementing a second shift with the current machinery they have, or by expanding production capacity. Some manufacturers did express concerns about engineering and laboratory resources if standards were set at a high level. However, given the compliance period, DOE believes that because most manufacturers already make equipment that meets the efficiency levels proposed in this NOPR, manufacturers would have time to redesign their product lines and production processes.

Issue 33: DOE seeks comment on its assessment of amended standards' potential impacts on manufacturing capacity.

d. Impacts on Subgroups of Manufacturers

Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. Using average cost assumptions developed for an industry cash-flow estimate is inadequate to assess differential impacts among manufacturer subgroups.

For the CWH equipment industry, DOE identified and evaluated the impact of amended energy conservation standards on one subgroup—small manufacturers. The SBA defines a "small business" as having 1,000 employees or fewer for NAICS code 333318, "Other Commercial and Service Industry Machinery Manufacturing." Based on this definition, DOE identified 13 domestic manufacturers in the CWH equipment industry that qualify as small businesses. For a discussion of the impacts on the small manufacturer subgroup, see the regulatory flexibility analysis in section VI.B of this notice and chapter 12 of the NOPR TSD.

e. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of recent or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to energy conservation standards for commercial equipment.

For the cumulative regulatory burden analysis, DOE looks at other regulations that could affect CWH equipment manufacturers that will take effect approximately three years before or after the 2019 compliance date of amended energy conservation standards for these equipment types. In interviews, manufacturers cited Federal regulations on equipment other than CWH equipment that contribute to their cumulative regulatory burden. The compliance years and expected industry conversion costs of relevant amended energy conservation standards are indicated in Table V.26.

TABLE V.26—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING THE COMMERCIAL WATER HEATING INDUSTRY

Federal energy conservation standards	Approximate compliance date	Estimated total industry conversion expense
Commercial Packaged Air-Conditioning and Heating Equipment 81 FR 2420 (January 15, 2016).	2018 and 2023*	$520.8M (*2014$*).
Residential Furnace Fans 79 FR 38129 (July 3, 2014)	2019	$40.6M (*2013$*).
Residential Boilers 81 FR 2320 (January 15, 2016)	2021	$2.5M (*2014$*).
Commercial Packaged Boilers**	2020	TBD.
Residential Furnaces 80 FR 13120 (March 12, 2015) (NOPR)	2021	$55M (*2013$*).
Direct Heating Equipment/Pool Heaters**	2021	TBD.
Residential Water Heaters**	2021	TBD.

*This rule has multiple compliance dates.

**The NOPR and final rule for this energy conservation standard have not been published. The compliance date and analysis of conversion costs are estimates and have not been finalized at this time.

In addition to Federal energy conservation standards, DOE identified another regulatory burden that would affect manufacturers of CWH equipment:

Environmental Protection Agency (EPA) Significant New Alternatives Policy (SNAP) Program

Several manufacturers raised concerns in interviews about EPA's SNAP program and, in particular, a proposed rule to modify the listings for certain hydrofluorocarbons in various end-uses in the aerosols, refrigeration and air conditioning, and foam blowing sectors. 79 FR 46126 (August 6, 2014). On July 20, 2015, the EPA published a final rule under the SNAP program that adopts modifications similar to those outlined in the August 6, 2014 proposed rule. 80 FR 42870, 42923–24. Specifically, the final rule changed the status of several hydrofluorocarbons to unacceptable for use as foam blowing agents beginning January 1, 2020. Several manufacturers of CWH equipment use these materials (*i.e.*, HFC–245fa) as blowing agents to insulate their CWH equipment. DOE acknowledges that the EPA ban on these substances will impact the materials used by some CWH equipment manufacturers, which could require them to alter the design of certain equipment.

Issue 34: DOE requests comment on whether the classification of unacceptable blowing agents in the EPA's SNAP final rule will affect the insulating properties of foam insulation used in CWH equipment analyzed in this NOPR. Specifically, DOE seeks data that show the difference in thermal resistivity (*i.e.*, R-value per inch) between insulation currently used in storage water heaters and insulation that would be compliant with the regulations amended in the SNAP final rule, if currently used blowing agents are classified as unacceptable.

3. National Impact Analysis

a. Significance of Energy Savings

For each TSL, DOE projected energy savings for CWH equipment shipped in the 30-year period that begins in the year of anticipated compliance with amended standards (2019–2048). The savings are measured over the entire lifetime of equipment shipped in the 30-year period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case.

Table V.27 presents the estimated primary energy savings for each considered TSL, and Table V.28 presents the estimated FFC energy savings for each TSL. The approach for estimating national energy savings is further described in section IV.H. Table V.29 shows cumulative primary national energy savings by TSL as a percentage of the no-new-standards-case primary energy usage.

TABLE V.27—CUMULATIVE NATIONAL PRIMARY ENERGY SAVINGS FOR CWH EQUIPMENT TRIAL STANDARD LEVELS FOR UNITS SHIPPED IN 2019–2048

[Quads]

Equipment class	Trial standard level*			
	TSL 1	TSL 2	TSL 3	TSL 4
Commercial gas-fired storage water heaters and gas-fired storage-type instantaneous water heaters	0.160	0.505	0.716	0.924
Residential-duty gas-fired storage water heaters	0.024	0.069	0.069	0.102
Gas-fired instantaneous water heaters and hot water supply boilers	0.179	0.661	0.772	0.888
Tankless water heaters	0.009	0.048	0.057	0.066
Hot water supply boilers	0.169	0.613	0.715	0.822
Electric storage water heaters	0.048	0.048	0.048	0.048
Total	0.410	1.282	1.604	1.961

* **Note:** Components may not sum to total due to rounding.

TABLE V.28—CUMULATIVE NATIONAL FULL-FUEL-CYCLE ENERGY SAVINGS FOR CWH EQUIPMENT TRIAL STANDARD LEVELS FOR UNITS SHIPPED IN 2019–2048

[Quads]

Equipment class	Trial standard level*			
	TSL 1	TSL 2	TSL 3	TSL 4
Commercial gas-fired storage water heaters and gas-fired storage-type instantaneous water heaters	0.179	0.569	0.805	1.038
Residential-duty gas-fired storage water heaters	0.027	0.078	0.078	0.115
Gas-fired instantaneous water heaters and hot water supply boilers	0.200	0.741	0.865	0.996
Tankless water heaters	0.011	0.054	0.064	0.074
Hot water supply boilers	0.190	0.687	0.801	0.921
Electric storage water heaters	0.050	0.050	0.050	0.050
Total	0.457	1.438	1.798	2.199

* **Note:** Components may not sum to total due to rounding.

TABLE V.29—CUMULATIVE PRIMARY NATIONAL ENERGY SAVINGS BY TSL AS A PERCENTAGE OF CUMULATIVE NO-NEW-STANDARDS-CASE ENERGY USAGE OF CWH EQUIPMENT SHIPPED IN 2019–2048

Equipment class	No-new-standards-case energy usage (quads)	TSL savings as percent of no-new-standards-case usage*			
		TSL 1 (%)	TSL 2 (%)	TSL 3 (%)	TSL 4 (%)
Commercial gas-fired storage water heaters and gas-fired storage-type instantaneous water heaters	6.0	3	8	12	15
Residential-duty gas-fired storage water heaters	0.7	4	10	10	15
Gas-fired instantaneous water heaters and hot water supply boilers	7.2	2	9	11	12
Tankless water heaters	0.5	2	9	11	12

TABLE V.29—CUMULATIVE PRIMARY NATIONAL ENERGY SAVINGS BY TSL AS A PERCENTAGE OF CUMULATIVE NO-NEW-STANDARDS-CASE ENERGY USAGE OF CWH EQUIPMENT SHIPPED IN 2019–2048—Continued

Equipment class	No-new-standards-case energy usage (quads)	TSL savings as percent of no-new-standards-case usage *			
		TSL 1 (%)	TSL 2 (%)	TSL 3 (%)	TSL 4 (%)
Hot water supply boilers	6.7	3	9	11	12
Electric storage water heaters	5.9	1	1	1	1
Total	19.8	2	6	8	10

* **Note:** Components may not sum to total due to rounding.

Circular A–4[120] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of equipment shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[121] The review timeframe established in EPCA is generally not synchronized with the equipment lifetime, equipment manufacturing cycles, or other factors specific to CWH equipment. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The full-fuel-cycle NES results based on a nine-year analytical period are presented in Table V.30. The impacts are counted over the lifetime of products shipped in 2019–2027.

TABLE V.30—CUMULATIVE FULL-FUEL-CYCLE NATIONAL ENERGY SAVINGS FOR TRIAL STANDARD LEVELS FOR COMMERCIAL WATER HEATING EQUIPMENT SHIPPED IN 2019–2027

[Quads]

Equipment class	Trial standard level *			
	TSL 1	TSL 2	TSL 3	TSL 4
Commercial gas-fired storage water heaters and gas-fired storage-type instantaneous water heaters	0.048	0.153	0.216	0.279
Residential-duty gas-fired storage water heaters	0.007	0.021	0.021	0.031
Gas-fired instantaneous water heaters and hot water supply boilers	0.053	0.197	0.230	0.264
Tankless water heaters	0.002	0.013	0.015	0.017
Hot water supply boilers	0.051	0.184	0.215	0.247
Electric storage water heaters	0.012	0.012	0.012	0.012
Total	0.121	0.382	0.479	0.586

* **Note:** Components may not sum to total due to rounding.

b. Net Present Value of Commercial Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for commercial consumers that would result from the TSLs considered for CWH equipment. In accordance with OMB's guidelines on regulatory analysis,[122] DOE calculated NPV using both a 3-percent and a 7-percent real discount rate. Table V.31 and Table V.32 show the commercial consumer NPV results at 3-percent and 7-percent discount rates respectively for each TSL considered for the CWH equipment covered in this rulemaking. In each case, the impacts cover the lifetime of equipment shipped in 2019–2048. Results for all equipment classes using the EPCA baseline can be found in chapter 10 of the NOPR TSD.

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[120] U.S. Office of Management and Budget, "Circular A–4: Regulatory Analysis" (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

[121] EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain equipment, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. (42 U.S.C. 6313(a)(6)(C)) While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some commercial equipment, the compliance period is 5 years rather than 3 years.

[122] OMB Circular A–4, section E (Sept. 17, 2003) (Available at *http://www.whitehouse.gov/omb/circulars_a004_a-4*).

Table V.31—Cumulative Net Present Value of Commercial Consumer Benefit for CWH Equipment Trial Standard Levels at a 3-Percent Discount Rate for Equipment Shipped in 2019–2048

[Billion 2014$]

Equipment class	Trial standard level *			
	TSL 1	TSL 2	TSL 3	TSL 4
Commercial gas-fired storage water heaters and gas-fired storage-type instantaneous water heaters	0.65	1.96	3.15	4.30
Residential-duty gas-fired storage water heaters	0.04	0.16	0.16	0.28
Gas-fired instantaneous water heaters and hot water supply boilers	0.84	2.78	3.30	3.83
Tankless water heaters	0.04	0.34	0.39	0.43
Hot water supply boilers	0.80	2.44	2.91	3.40
Electric storage water heaters	0.14	0.14	0.14	0.14
Total	1.68	5.04	6.75	8.55

* **Note:** Components may not sum to total due to rounding.

Table V.32—Cumulative Net Present Value of Commercial Consumer Benefit for CWH Equipment Trial Standard Levels at a 7-Percent Discount Rate for Equipment Shipped in 2019–2048

[Billion 2014$]

Equipment class	Trial standard level *			
	TSL 1	TSL 2	TSL 3	TSL 4
Commercial gas-fired storage water heaters and gas-fired storage-type instantaneous water heaters	0.26	0.71	1.23	1.73
Residential-duty gas-fired storage water heaters	0.006	0.03	0.03	0.07
Gas-fired instantaneous water heaters and hot water supply boilers	0.26	0.80	0.96	1.13
Tankless water heaters	0.01	0.13	0.15	0.16
Hot water supply boilers	0.25	0.67	0.82	0.96
Electric storage water heaters	0.04	0.04	0.04	0.04
Total	0.57	1.58	2.26	2.96

* **Note:** Components may not sum to total due to rounding.

The NPV results based on the aforementioned nine-year analytical period are presented in Table V.33 and Table V.34. The impacts are counted over the lifetime of equipment shipped in 2019–2027. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

Table V.33—Cumulative Net Present Value of Commercial Consumer Benefit for CWH Equipment Trial Standard Levels at a 3-Percent Discount Rate for Equipment Shipped in 2019–2027

[Billion 2014$]

Equipment class	Trial standard level *			
	TSL 1	TSL 2	TSL 3	TSL 4
Commercial gas-fired storage water heaters and gas-fired storage-type instantaneous water heaters	0.19	0.41	0.78	1.13
Residential-duty gas-fired storage water heaters	0.01	0.00	0.00	0.04
Gas-fired instantaneous water heaters and hot water supply boilers	0.25	0.74	0.89	1.05
Tankless water heaters	0.01	0.07	0.09	0.10
Hot water supply boilers	0.24	0.67	0.80	0.95
Electric storage water heaters	0.04	0.04	0.04	0.04
Total	0.48	1.19	1.71	2.25

* **Note:** Components may not sum to total due to rounding.

TABLE V.34—CUMULATIVE NET PRESENT VALUE OF COMMERCIAL CONSUMER BENEFIT FOR CWH EQUIPMENT TRIAL STANDARD LEVELS AT A 7-PERCENT DISCOUNT RATE FOR EQUIPMENT SHIPPED IN 2019–2027

[Billion 2014$]

Equipment class	Trial standard level *			
	TSL 1	TSL 2	TSL 3	TSL 4
Commercial gas-fired storage water heaters and gas-fired storage-type instantaneous water heaters	0.10	0.20	0.43	0.64
Residential-duty gas-fired storage water heaters	−0.001	−0.01	−0.01	0.00
Gas-fired instantaneous water heaters and hot water supply boilers	0.11	0.30	0.37	0.43
Tankless water heaters	0.00	0.04	0.05	0.06
Hot water supply boilers	0.11	0.26	0.32	0.38
Electric storage water heaters	0.02	0.02	0.02	0.02
Total	0.23	0.50	0.80	1.10

* **Note:** Components may not sum to total due to rounding.

The results presented in this section reflect an assumption of no change in CWH equipment prices by efficiency level over the forecast period. For this NOPR, DOE conducted sensitivity analyses to examine NIA results with varying inputs. The main reason for assuming no change in CWH equipment prices was data limitations, and the same limitations made alternative price trends problematic as well, so in the sensitivity analyses, the high and low price trends were also assumed to be "no change" trends. Sensitivity analyses are described in appendix 10B of the NOPR TSD.

c. Indirect Impacts on Employment

DOE expects that amended energy conservation standards for CWH equipment would reduce energy costs for equipment owners, with the resulting net savings being redirected to other forms of economic activity. Those shifts in spending and economic activity could affect the demand for labor. As described in section IV.N, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered in this rulemaking. DOE understands that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term time frames (2019–2025), where these uncertainties are reduced.

The results suggest that these proposed standards would be likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the NOPR TSD presents more detailed results about anticipated indirect employment impacts.

4. Impact on Utility or Performance of Equipment

DOE has tentatively concluded that the amended standards it is proposing in this NOPR would not lessen the utility or performance of CWH equipment.

5. Impact of Any Lessening of Competition

DOE has also considered any lessening of competition that is likely to result from new and amended standards. The Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6313(a)(6)(B)(ii)(V) and (C)(i))

To assist the Attorney General in making such determination, DOE has provided the Department of Justice (DOJ) with copies of this NOPR and the TSD for review. DOE will consider DOJ's comments on the proposed rule in preparing the final rule, and DOE will publish and respond to DOJ's comments in that document. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding those potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

6. Need of the Nation To Conserve Energy

An improvement in the energy efficiency of the equipment subject to this rule is likely to improve the security of the nation's energy system by reducing overall demand for energy. Reduced energy demand may also improve the reliability of the energy system. DOE evaluated the impact on national electric generating capacity for each considered TSL. Chapter 15 of the NOPR TSD provides more details of the TSLs' impact on the electricity and natural gas utilities.

Potential energy savings from the proposed amended standards for the considered CWH equipment classes could also produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with electricity production. Table V.35 provides DOE's estimate of cumulative emissions reductions projected to result from the TSLs considered in this rulemaking. The table includes both power sector emissions and upstream emissions. The upstream emissions were calculated using the multipliers discussed in section IV.K. DOE reports annual CO_2, NO_X, and Hg emissions reductions for each TSL in chapter 13 of the NOPR TSD.

TABLE V.35—CUMULATIVE EMISSIONS REDUCTION FOR POTENTIAL AMENDED STANDARDS FOR COMMERCIAL WATER HEATING EQUIPMENT SHIPPED IN 2019–2048

	TSL			
	1	2	3	4
Power Sector and Site Emissions*				
CO_2 (*million metric tons*)	22	68	85	104
NO_X (*thousand tons*)	30	97	121	148
Hg (*tons*)	0.01	0.004	0.004	0.005
N_2O (*thousand tons*)	0.08	0.16	0.20	0.24
CH_4 (*thousand tons*)	0.66	1.52	1.89	2.30
SO_2 (*thousand tons*)	2.02	1.36	1.57	1.82
Upstream Emissions				
CO_2 (*million metric tons*)	3	10	12	15
NO_X (*thousand tons*)	47	156	195	239
Hg (*tons*)	0.0001	0.00004	0.00004	0.00005
N_2O (*thousand tons*)	0.01	0.02	0.02	0.03
CH_4 (*thousand tons*)	279	934	1,170	1,432
SO_2 (*thousand tons*)	0.05	0.06	0.08	0.09
Total Emissions				
CO_2 (*million metric tons*)	25	78	98	119
NO_X (*thousand tons*)	77	252	316	386
Hg (*tons*)	0.01	0.004	0.004	0.005
N_2O (*thousand tons*)	0.08	0.18	0.22	0.26
N_2O (*thousand tons CO_2eq*) **	22	47	58	70
CH_4 (*thousand tons*)	279	936	1,172	1,434
CH_4 (*thousand tons CO_2eq*) **	7,821	26,197	32,812	40,149
SO_2 (*thousand tons*)	2.07	1.42	1.65	1.91

* Includes emissions from additional gas use of more-efficient CWH equipment.

** CO_2eq is the quantity of CO_2 that would have the same global warming potential (GWP).

As part of the analysis for this NOPR, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X estimated for each of the TSLs considered for CWH equipment. As discussed in section IV.L, for CO_2, DOE used the most recent values for the SCC developed by an interagency process. The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets are based on the average SCC from three integrated assessment models, at discount rates of 2.5 percent, 3 percent, and 5 percent. The fourth set, which represents the 95th-percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The four SCC values for CO_2 emissions reductions in 2015, expressed in 2014$, are $12.2 per metric ton, $40.0 per metric ton, $62.3 per metric ton, and $117 per metric ton. The values for later years are higher due to increasing emissions-related costs as the magnitude of projected climate change increases.

Table V.36 presents the global value of CO_2 emissions reductions at each TSL. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values, and these results are presented in chapter 14 of the NOPR TSD.

TABLE V.36—GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR CWH EQUIPMENT SHIPPED IN 2019–2048

TSL	SCC scenario *			
	Million 2014$			
	5% discount rate, average	3% discount rate, average	2.5% discount rate, average	3% discount rate, 95th percentile
Power Sector and Site Emissions **				
1	145	680	1,085	2,073
2	441	2,081	3,327	6,348
3	555	2,612	4,173	7,967
4	682	3,202	5,113	9,765
Upstream Emissions				
1	19	90	143	273

TABLE V.36—GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR CWH EQUIPMENT SHIPPED IN 2019–2048—Continued

TSL	SCC scenario *			
	Million 2014$			
	5% discount rate, average	3% discount rate, average	2.5% discount rate, average	3% discount rate, 95th percentile
2	63	297	474	905
3	79	373	596	1,138
4	98	458	731	1,396
Total Emissions				
1	164	769	1,228	2,346
2	504	2,378	3,801	7,253
3	635	2,985	4,769	9,105
4	780	3,660	5,844	11,161

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.2, $40.0, $62.3 and $117 per metric ton (2014$). The values are for CO_2 only (*i.e.*, no CO_2eq of other greenhouse gases).

** Includes site emissions associated with use of gas-fired CWH equipment.

DOE is well aware that scientific and economic knowledge continues to evolve rapidly regarding the contribution of CO_2 and other greenhouse gas (GHG) emissions to changes in the future global climate and the potential resulting damages to the world economy. Thus, any value placed in this rulemaking on reducing CO_2 emissions is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this NOPR the most recent values and analyses resulting from the interagency review process.

DOE also estimated the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from the considered TSLs for amended standards for the CWH equipment that is the subject of this NOPR. The dollar-per-ton values that DOE used are discussed in section IV.L. Table V.37 presents the cumulative present value for NO_X emissions for each TSL calculated using the average dollar-per-ton values and 7-percent and 3-percent discount rates. This table presents values that use the low dollar-per-ton values, which reflect DOE's primary estimate. Results that reflect the range of NO_X dollar-per-ton values are presented in Table V.37. Detailed discussions on NO_X emissions reductions are available in chapter 14 of the NOPR TSD.

TABLE V.37—PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR POTENTIAL STANDARDS FOR CWH EQUIPMENT

TSL	Million 2014$	
	3% discount rate	7% discount rate
Power Sector and Site Emissions *		
1	93	36
2	294	112
3	371	142
4	456	176
Upstream Emissions		
1	143	55
2	475	181
3	599	231
4	737	285
Total Emissions		
1	236	91
2	769	294
3	970	373
4	1,193	461

* Includes site emissions associated with use of gas-fired CWH equipment.

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table V.38 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of consumer savings calculated for each TSL for CWH equipment considered in this rulemaking, at both a 7-percent and 3-percent discount rate. The CO_2 values used in the columns correspond to the four sets of SCC values discussed in section IV.L.1.

TABLE V.38—CWH EQUIPMENT TSLS: NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Consumer NPV at 3% discount rate added with: (billion 2014$)			
	SCC at 5% discount rate* and 3% low NO_X value	SCC at 3% discount rate* and 3% low NO_X value	SCC at 2.5% discount rate* and 3% low NO_X value	95th percentile SCC at 3% discount rate* and 3% low NO_X value
1	2.105	2.711	3.170	4.287
2	6.398	8.272	9.695	13.147
3	8.463	10.814	12.598	16.933
4	10.656	13.537	15.721	21.038

TSL	Consumer NPV at 7% discount rate added with: (billion 2014$)			
	SCC at 5% discount rate* and 7% low NO_X value	SCC at 3% discount rate* and 7% low NO_X value	SCC at 2.5% discount rate* and 7% low NO_X value	95th percentile SCC at 3% discount rate* and 7% low NO_X value
1	0.831	1.436	1.895	3.013
2	2.403	4.277	5.700	9.152
3	3.302	5.653	7.437	11.772
4	4.242	7.123	9.307	14.624

*The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the integrated assessment models, at discount rates of 5, 3, and 2.5 percent. For example, for 2015 emissions, these values are $12.2/metric ton, $40.0/metric ton, and $62.3/metric ton, in 2014$, respectively. The fourth set ($117 per metric ton in 2014$ for 2015 emissions), which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The SCC values are emission year specific. For NO_X emissions, the 3 and 7-percent values are discussed in more detail in section IV.L.2.

In considering the above results, two issues are relevant. First, the national operating cost savings are domestic U.S. commercial consumer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and the SCC are performed with different methods that use quite different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2019–2048. Because CO_2 emissions have a very long residence time in the atmosphere,[123] the SCC values in future years reflect future CO_2 emissions impacts that continue beyond 2100 through 2300.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6313(a)(6)(B)(ii)(VII) and (C)(i)) No other factors were considered in this analysis.

C. Proposed Standards

To adopt national standards more stringent than the current standards for CWH equipment, DOE must determine that such action would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii) and (C)(i)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII) and (C)(i))

For this NOPR, DOE considered the impacts of amended standards for CWH equipment at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant additional amount of energy.

To aid the reader in understanding the benefits and/or burdens of each TSL, tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of commercial consumers who may be disproportionately affected by a national standard and impacts on employment.

1. Benefits and Burdens of Trial Standard Levels Considered for CWH Equipment

Table V.39, Table V.40, and Table V.41 summarize the quantitative impacts estimated for each TSL for CWH equipment. The national impacts are measured over the lifetime of CWH equipment shipped in the 30-year period that begins in the year of compliance with amended standards (2019–2048). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results.

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[123] The atmospheric lifetime of CO_2 is estimated of the order of 30–95 years. Jacobson, MZ, "Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming,'" *J. Geophys. Res.* 110. pp. D14105 (2005).

TABLE V.39—SUMMARY OF ANALYTICAL RESULTS FOR CWH EQUIPMENT: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4
National FFC Energy Savings (*quads*)	0.457	1.438	1.798	2.199.
NPV of Commercial Consumer Benefits (billion 2014$)				
3% discount rate	1.68	5.04	6.75	8.55.
7% discount rate	0.57	1.58	2.26	2.96.
Manufacturer Impacts				
Industry NPV (*2014$ million*):				
No-new-standards case INPV = 176.2	171.5 to 177.4	158.8 to 187.8	152.8 to 185.0	128.6 to 166.6.
Change in Industry NPV (2014$ million)	(4.7) to 1.2	(17.4) to 11.6	(23.4) to 8.8	(47.6) to (9.7).
Change in Industry NPV (%)	(2.7) to 0.7	(9.9) to 6.6	(13.3) to 5.0	(27.0) to (5.5).
Cumulative Emissions Reduction (Total FFC Emissions)				
CO_2 (*million metric tons*)	25.08	78.06	97.63	119.34.
NO_X (*thousand tons*)	76.93	252.35	315.95	386.48.
Hg (tons)	0.01	0.004	0.004	0.005.
N_2O (*thousand tons*)	0.08	0.18	0.22	0.26.
N_2O (*thousand tons CO_2eq*)	22.11	46.63	57.76	70.14.
CH_4 (*thousand tons*)	279	936	1,172	1,434.
CH_4 (*thousand tons CO_2eq*) *	7,821	26,197	32,812	40,149.
SO_2 (*thousand tons*)	2.07	1.42	1.65	1.91.
Value of Emissions Reduction (Total FFC Emissions)				
CO_2 (*2014$ million*) **	164 to 2,346	504 to 7,253	635 to 9,105	780 to 11,161.
NO_X—3% discount rate (*2014$ million*)	236 to 524	769 to 1,703	970 to 2,148	1,193 to 2,643.
NO_X—7% discount rate (*2014$ million*)	91 to 203	294 to 655	373 to 833	461 to 1,030.

* CO_2eq is the quantity of CO_2 that would have the same global warming potential (GWP).
** Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.
Note: Parentheses indicate negative values.

TABLE V.40—SUMMARY OF ANALYTICAL RESULTS FOR CWH EQUIPMENT: NPV OF COMMERCIAL CONSUMER BENEFITS BY EQUIPMENT CLASS

Equipment class	Discount rate (%)	Trial standard level * Billion 2014$			
		1	2	3	4
Commercial gas-fired storage water heaters and gas-fired storage-type instantaneous water heaters	3	0.654	1.958	3.154	4.302
	7	0.256	0.708	1.231	1.727
Residential-duty gas-fired storage water heaters	3	0.044	0.163	0.163	0.282
	7	0.006	0.026	0.026	0.067
Gas-fired instantaneous water heaters and hot water supply boilers	3	0.842	2.778	3.296	3.832
	7	0.265	0.805	0.964	1.128
Tankless water heaters	3	0.038	0.340	0.387	0.433
	7	0.013	0.130	0.147	0.163
Hot water supply boilers	3	0.804	2.438	2.909	3.399
	7	0.251	0.674	0.817	0.964
Electric storage water heaters	3	0.138	0.138	0.138	0.138
	7	0.042	0.042	0.042	0.042
Total—All Classes	3	1.679	5.037	6.750	8.553
	7	0.568	1.580	2.263	2.963

* **Note:** Components may not sum to total due to rounding.

TABLE V.41—SUMMARY OF ANALYTICAL RESULTS FOR CWH EQUIPMENT: COMMERCIAL CONSUMER IMPACTS

	TSL 1	TSL 2	TSL 3	TSL 4
Commercial Consumer Mean LCC Savings (2014$)				
Commercial gas-fired storage water heaters	219	317	794	1,252
Residential-duty gas-fired storage water heaters	537	14	14	241
Gas-fired instantaneous water heaters and hot water supply boilers	891	2,944	3,488	4,046
Gas-fired tankless water heaters	86	1,009	1,119	1,224
Gas-fired hot water supply boilers	1,245	3,794	4,528	5,285

TABLE V.41—SUMMARY OF ANALYTICAL RESULTS FOR CWH EQUIPMENT: COMMERCIAL CONSUMER IMPACTS—Continued

	TSL 1	TSL 2	TSL 3	TSL 4
Electric storage water heaters	47	47	47	47
Commercial Consumer Simple PBP (years)				
Commercial gas-fired storage water heaters	3.8	5.7	4.3	3.8
Residential-duty gas-fired storage water heaters	10.5	11.9	11.9	10.2
Gas-fired instantaneous water heaters and hot water supply boilers	3.6	5.8	5.6	5.6
Gas-fired tankless water heaters	2.9	Immediate	Immediate	Immediate
Gas-fired hot water supply boilers	3.6	6.7	6.4	6.3
Electric storage water heaters	6.5	6.5	6.5	6.5
Distribution of Commercial Consumer LCC Impacts (Net Cost %)				
Commercial gas-fired storage water heaters	8	30	24	21
Residential-duty gas-fired storage water heaters	32	42	42	36
Gas-fired instantaneous water heaters and hot water supply boilers	14	27	26	27
Gas-fired tankless water heaters	11	38	35	33
Gas-fired hot water supply boilers	15	22	22	24
Electric storage water heaters	14	14	14	14

Note: Parentheses indicate negative values. Immediate payback can result from a decrease in installation cost that is greater than the incremental increase in equipment cost.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers undervalue future energy savings as a result of: (1) A lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases (*e.g.*, an inefficient ventilation fan in a new building or the delayed replacement of a water pump); (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (*e.g.*, renter versus building owner, builder versus home buyer). Other literature indicates that with less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher-than-expected rate between current consumption and uncertain future energy cost savings. This undervaluation suggests that regulation that promotes energy efficiency can produce significant net private gains (as well as producing social gains by, for example, reducing pollution).

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an amended energy conservation standard, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy efficiency standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[124] DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and methods to quantify this impact in its regulatory analysis.

First, DOE considered TSL 4, which corresponds to the max-tech level for all the equipment classes and offers the potential for the highest cumulative energy savings through the analysis period from 2019 through 2048. The estimated energy savings from TSL 4 are 2.2 quads of energy, an amount DOE considers significant. TSL 4 has an estimated NPV of commercial consumer benefit of $2.96 billion using a 7-percent discount rate, and $8.55 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 4 are 119 million metric tons of CO_2, 1.9 thousand tons of SO_2, 386 thousand tons of NO_X, 0.005 tons of Hg, 1,434 thousand tons of CH_4, and 0.3 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reductions at TSL 4 ranges from $780 million to $11,161 million.

At TSL 4, the average LCC savings range from $47 to $4,046, and the simple PBP ranges from 3.8 to 10.2 years, depending on equipment class. The fraction of commercial consumers incurring a net LCC cost ranges from 14 percent for electric storage water heaters to 36 percent for residential-duty gas-fired storage water heaters.

At TSL 4, the projected change in INPV ranges from a decrease of $47.6 million to a decrease of $9.7 million. If the lower bound of the range of impacts is reached, as DOE expects, TSL 4 could result in a net loss of up to 27.0 percent in INPV for manufacturers of covered CWH equipment.

Accordingly, the Secretary tentatively concludes that at TSL 4 for CWH equipment, the benefits of energy savings, positive NPV of commercial consumer benefits, emission reductions, and the estimated monetary value of the CO_2 and NO_X emissions reductions would be outweighed by the large reduction in INPV at TSL 4. Consequently, DOE has tentatively concluded that TSL 4 is not economically justified.

Next DOE considered TSL 3, which would save an estimated 1.8 quads of energy, an amount DOE considers significant. TSL 3 has an estimated NPV of commercial consumer benefit of $2.26 billion using a 7-percent discount rate, and $6.75 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 3 are 98 million metric tons of CO_2, 1.6 thousand tons of SO_2, 316 thousand tons of NO_X, 0.004 tons of Hg, 1,172 thousand tons of CH_4, and 0.2 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $635 million to $9,105 million.

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[124] Sanstad, A., *Notes on the Economics of Household Energy Consumption and Technology Choice*, Lawrence Berkeley National Laboratory (2010) (Available at: <*www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf*>).

At TSL 3, the average LCC savings ranges from $47 to $3,488, and the simple PBP ranges from 4.3 to 11.9 years, depending on equipment class. The fraction of commercial consumers incurring a net LCC cost ranges from 14 percent for electric storage water heaters to 42 percent for residential-duty gas-fired storage water heaters.

At TSL 3, the projected change in INPV ranges from a decrease of $23.4 million to an increase of $8.8 million. At TSL 3, DOE recognizes the risk of negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the lower bound of the range of impacts is reached, as DOE expects, TSL 3 could result in a net loss of up to 13.3 percent in INPV for manufacturers of covered CWH equipment.

After carefully considering the analytical results and weighing the benefits and burdens, DOE has tentatively concluded that at TSL 3 for CWH equipment, the benefits of energy savings, positive NPV of commercial consumer benefit, positive impacts on commercial consumers through reduced life-cycle costs, emissions reductions, and the estimated monetary value of emissions reductions would outweigh the potential reductions in INPV for manufacturers. Accordingly, the Secretary of Energy has tentatively concluded that TSL 3 would save a significant additional amount of energy and is technologically feasible and economically justified.

Therefore, based upon the above considerations, DOE proposes to adopt amended energy conservation standards for commercial water heating equipment at TSL 3. Table V.42 and Table V.43 present the proposed energy conservation standards for commercial water heating equipment.

TABLE V.42—PROPOSED AMENDED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL WATER HEATING EQUIPMENT EXCEPT FOR RESIDENTIAL-DUTY COMMERCIAL WATER HEATERS

[TSL 3]

Equipment class **	Specifications	Energy conservation standards *	
		Minimum thermal efficiency (%)	Maximum standby loss
Electric storage water heaters	All	N/A	$0.84 \times [0.30+27/V_r]$ (%/h).
Gas-fired storage water heaters	All †	95	$0.63 \times [Q/800 + 110(V_r)^{1/2}]$ (*Btu/h*).
Gas-fired instantaneous water heaters and hot water supply boilers:			
Instantaneous water heaters (other than storage-type) and hot water supply boilers.	<10 gal	94	N/A.
Instantaneous water heaters (other than storage-type) and hot water supply boilers.	≥10 gal	94	$Q/800 + 110(V_r)^{1/2}$ (*Btu/h*).
Storage-type instantaneous water heaters	≥10 gal	95	$0.63 \times [Q/800 + 110(V_r)^{1/2}]$ (*Btu/h*).

* V_r is the rated volume in gallons. Q is the fuel input rate in Btu/h.

** DOE proposes a new equipment class for storage-type instantaneous water heaters. This class of equipment is similar to storage water heaters in design, cost, and application. However, it has a ratio of input capacity to storage volume greater than or equal to 4,000 Btu/h per gallon of water stored; therefore, it is classified as an instantaneous water heater by EPCA's definition at 42 U.S.C. 6311(12)(B). Because of the similarities to storage water heaters, DOE grouped these two equipment classes together in its analyses for this NOPR. Storage-type instantaneous water heaters are further discussed in section IV.A.2.a.

† These standards only apply to commercial water heating equipment that does not meet the definition of "residential-duty commercial water heater." See Table V.43 for energy conservation standards proposed for residential-duty commercial water heaters.

TABLE V.43—PROPOSED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL-DUTY COMMERCIAL WATER HEATING EQUIPMENT

[TSL 3]

Equipment class	Specification *	Draw pattern	Uniform energy factor **
Gas-fired Storage †	>75 kBtu/h and	Very Small	$0.4618 - (0.0010 \times V_r)$.
	≤105 kBtu/h and	Low	$0.6626 - (0.0009 \times V_r)$.
	≤120 gal and	Medium	$0.6996 - (0.0007 \times V_r)$.
	≤180 °F	High	$0.7311 - (0.0006 \times V_r)$.

* To be classified as a residential-duty commercial water heater, a commercial water heater must, if requiring electricity, use single-phase external power supply, and not be designed to heat water at temperatures greater than 180 °F.

** V_r is the rated storage volume.

† Energy conservation standards for residential-duty commercial gas-fired storage water heaters were converted from the thermal efficiency and standby loss metrics to the new UEF metric using conversion factors proposed by DOE in the April 2015 NOPR for all four draw patterns: Very small, low, medium, and high. 80 FR 20116, 20143 (April 14, 2015).

2. Summary of Benefits and Costs (Annualized) of the Proposed Standards

The benefits and costs of the proposed standards in this document can also be expressed in terms of annualized values. The annualized monetary values are the sum of: (1) The annualized national economic value (expressed in 2014$) of the benefits from operating equipment that meets the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase costs, which is another way of representing commercial consumer NPV), and (2) the annualized monetary value of the benefits of emission reductions, including CO_2 emission reductions.[125] The value of the CO_2 reductions, otherwise known as the Social Cost of Carbon (SCC), is calculated using a range of values per metric ton of CO_2 developed by a recent interagency process.

The national operating savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing these equipment. The national operating cost savings is measured for the lifetime of CWH equipment shipped in 2019–2048.

The CO_2 reduction is a benefit that accrues globally due to decreased domestic energy consumption that is expected to result from this rule. Because CO_2 emissions have a very long residence time in the atmosphere,[126] the SCC values in future years reflect future CO_2-emissions impacts that continue beyond 2100 through 2300.

Table V.44 shows the annualized benefit and cost values for the proposed standards for CWH equipment under TSL 3, expressed in 2014$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate along with the average SCC series that has a value of $40.0 per metric ton in 2015), the estimated cost of the CWH standards proposed in this document is $144 million per year in increased equipment costs, while the estimated benefits are $367 million per year in reduced equipment operating costs, $166 million per year from CO_2 reductions, and $37 million per year from reduced NO_X emissions. In this case, the annualized net benefit amounts to $427 million per year.

Using a 3-percent discount rate for benefits and costs and the average SCC series that has a value of $40.0 per metric ton in 2015, the estimated cost of the CWH standards proposed in this NOPR is $141 million per year in increased equipment costs, while the estimated benefits are $517 million per year in reduced operating costs, $166 million per year from CO_2 reductions, and $54 million per year in reduced NO_X emissions. In this case, the net benefit amounts to $597 million per year.

TABLE V.44—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS (TSL 3) FOR CWH EQUIPMENT *

	Discount rate	Million 2014$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
		Benefits		
Commercial Consumer Operating Cost Savings *	7%	367	336	411.
	3%	517	465	588.
CO_2 Reduction (using mean SCC at 5% discount rate) **	5%	48	46	50.
CO_2 Reduction (using mean SCC at 3% discount rate) **	3%	166	159	176.
CO_2 Reduction (using mean SCC at 2.5% discount rate) **	2.5%	245	234	259.
CO_2 Reduction (using 95th percentile SCC at 3% discount rate) **.	3%	508	485	536.
NO_X Reduction †	7%	37	35	86.
	3%	54	52	126.
Total Benefits ††	7% plus CO_2 range	452 to 912	417 to 855	547 to 1,033.
	7%	571	530	673.
	3% plus CO_2 range	619 to 1,079	563 to 1,001	765 to 1,251.
	3%	737	676	890.
		Costs		
Commercial Consumer Incremental Equipment Costs	7%	144	147	142.
	3%	141	144	138.
		Net Benefits/Costs		
Total ††	7% plus CO_2 range	308 to 768	270 to 709	406 to 892.
	7%	427	383	531.
	3% plus CO_2 range	478 to 938	419 to 857	627 to 1,113.
	3%	597	532	752.

* This table presents the annualized costs and benefits associated with commercial water heating equipment shipped in 2019–2048. These results include benefits to commercial consumers that accrue after 2048 from the equipment shipped in 2019–2048. The Primary, Low Benefits, and High Benefits Estimates for operating cost savings utilize projections of energy prices and building growth (leading to higher shipments) from the *AEO 2015* Reference case, Low Estimate, and High Estimate, respectively. In addition, DOE used a constant price assumption as the default price projection; the cost to manufacture a given unit of higher efficiency neither increases nor decreases over time. The analysis of the price trends is described in section IV.F.2.a and appendix 10B of the NOPR TSD.

** The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the integrated assessment models, at discount rates of 5, 3, and 2.5 percent. For example, for 2015 emissions, these values are $12.2/metric ton, $40.0/metric ton, and $62.3/metric ton, in 2014$, respectively. The fourth set ($117 per metric ton in 2014$ for 2015 emissions), which represents the 95th percentile of the SCC distribution calculated using SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The SCC values are emission year specific. See section IV.L for more details.

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[125] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2015, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (2020, 2030, *etc.*), and then discounted the present value from each year to 2015. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year that yields the same present value.

[126] The atmospheric lifetime of CO_2 is estimated to be on the order of 30–95 years. Jacobson, MZ, "Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming,'" *J. Geophys. Res.* 110. pp. D14105 (2005).

† The $/ton values used for NO_X are described in section IV.L. DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, "Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants," published in June 2014 by EPA's Office of Air Quality Planning and Standards. (Available at *www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal0602.pdf.*) See section IV.L.2 for further discussion. Note that the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al. 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al. 2011), the values would be nearly two-and-a-half times larger. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emissions, DOE intends to investigate refinements to the agency's current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule.

†† Total benefits for both the 3-percent and 7-percent cases are derived using the series corresponding to SCC value of $40.0/metric ton . In the rows labeled "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that this document's proposed standards address are as follows:

(1) Insufficient information and the high costs of gathering and analyzing relevant information lead some commercial consumers to miss opportunities to make cost-effective investments in energy efficiency.

(2) In some cases, the benefits of more-efficient equipment are not realized due to misaligned incentives between purchasers and users. An example of such a case is when the equipment purchase decision is made by a building contractor or building owner who does not pay the energy costs of operating the equipment.

(3) There are external benefits resulting from improved energy efficiency of CWH equipment that are not captured by the users of such equipment. These benefits include externalities related to public health, environmental protection, and energy security that are not reflected in energy prices, such as reduced air pollutants and emissions of greenhouse gases that impact human health and global warming. DOE attempts to quantify some of the external benefits through use of Social Cost of Carbon values.

The Administrator of the Office of Information and Regulatory Affairs (OIRA) in the OMB has determined that the regulatory action proposed in this document is a "significant regulatory action" under section (3)(f) of Executive Order 12866. Accordingly, pursuant to section 6(a)(3)(B) of the Executive Order, DOE has provided to OIRA: (i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and (ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate. DOE has included these documents in the rulemaking record.

In addition, the Administrator of OIRA has determined that the proposed regulatory action is an "economically significant regulatory action" under section (3)(f)(1) of Executive Order 12866. Accordingly, pursuant to section 6(a)(3)(C) of the Executive Order, DOE has provided to OIRA a regulatory impact analysis (RIA), including the underlying analysis, of benefits and costs anticipated from the regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments prepared pursuant to Executive Order 12866 can be found in the technical support document for this rulemaking. These documents have also been included in the rulemaking record.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. 76 FR 3281 (Jan. 21, 2011). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that this NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*). DOE has prepared the following IRFA for the equipment that is the subject of this rulemaking.

For manufacturers of CWH equipment, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as "small businesses" for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848 (May 15, 2000), as amended at 77 FR 49991, 50000, 50011 (August 20, 2012) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/category/navigation-structure/contracting/contracting-officials/small-business-size-standards*. Manufacturing of CWH equipment is classified under NAICS 333318, "Other Commercial and Service Industry Machinery Manufacturing." The SBA sets a threshold of 1,000 employees or less for an entity to be considered as a small business for this category.

1. Description and Estimated Number of Small Entities Regulated

To estimate the number of companies that could be small business manufacturers of equipment covered by this rulemaking, DOE conducted a market survey using publicly-available information to identify potential small manufacturers. DOE's research involved industry trade association membership directories (including AHRI[127]), public databases (*e.g.,* the California Energy Commission Appliance Efficiency Database[128] and DOE's Compliance Certification Database[129]), individual company Web sites, and market research tools (*e.g.,* Hoovers reports[130]) to create a list of companies that manufacture or sell equipment covered by this rulemaking. DOE also asked stakeholders and industry representatives if they were aware of any other small manufacturers during manufacturer interviews. DOE reviewed publicly-available data and contacted select companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of covered CWH equipment. DOE screened out companies that do not offer equipment covered by this rulemaking, do not meet the definition of a "small business," or are foreign owned and operated.

DOE identified 25 manufacturers of commercial water heaters sold in the U.S. Of these 25, DOE identified 13 as domestic small businesses. Twelve of the 13 domestic small businesses are original equipment manufacturers (OEMs) of CWH equipment covered by this rulemaking, while one rebrands equipment manufactured by other OEMs.

Before issuing this NOPR, DOE attempted to contact all the small business manufacturers of CWH equipment it had identified. Two of the small businesses agreed to take part in an MIA interview. DOE also obtained information about small business impacts while interviewing large manufacturers.

DOE estimates that small manufacturers control approximately 7 percent of the CWH market. Based on DOE's research, six small businesses are primarily boiler manufacturers that produce hot water supply boilers covered under this rulemaking. Two of these manufacturers primarily produce high-efficiency condensing equipment, while the remaining four do not produce equipment that meet the efficiency level at the proposed TSL (TSL 3). DOE notes, however, that three of these four manufacturers offer condensing commercial packaged boilers. DOE believes the condensing heat exchanger designs for commercial packaged boilers could be adapted for use in hot water supply boilers. Five of the small businesses primarily manufacture commercial gas-fired storage and electric storage water heaters. Three of these five companies produce primarily high-efficiency condensing gas-fired equipment, while two of the five primarily produce baseline equipment. However, both of the latter companies offer at least one condensing model. Of the remaining small businesses, one exclusively manufacturers condensing gas-fired tankless water heaters, and one rebrands equipment that is produced by other CWH equipment manufacturers.

2. Description and Estimate of Compliance Requirements

As previously mentioned, in addition to direct interviews of small manufacturers, DOE also used feedback from other manufacturer interviews to help evaluate the potential impacts of potential amended standards on small businesses. In addition, DOE used product listings data to better understand the percentage of models small manufacturers may have to convert in order to comply with standards.

In interviews, small manufacturers stated that they may be disproportionately affected by product conversion costs. Product redesign, testing, and certification costs tend to be fixed and do not scale with sales volume. When confronted with new or amended energy conservation standards, small businesses must make investments in research and development to redesign their equipment, but because they often have lower sales volumes, they may need to spread these costs across fewer units. Small manufacturers also stated that they have limited lab space, personnel, and equipment to test their CWH equipment. They argued that they would experience higher testing costs relative to larger manufacturers, as they would need to outsource some or all of their testing at a higher per-unit cost. Small manufacturers pointed out that in general, because they have fewer engineers and product development resources, they would likely have to divert engineering resources from customer and new product initiatives for a longer period of time than would their larger competitors.

These product conversion cost and engineering resource considerations are particularly applicable to the two small manufacturers that primarily offer baseline commercial gas-fired storage water heaters and the four manufacturers that only offer lower-efficiency hot water supply boilers. DOE estimates that approximately 57 percent of commercial gas-fired storage models produced by small CWH equipment manufacturers do not meet the thermal efficiency level proposed in TSL 3. For the two manufacturers that primarily offer baseline commercial gas-fired storage water heaters, DOE estimates that 88 percent of their models do not meet the proposed efficiency levels at TSL 3. For reference, DOE estimates that large commercial gas-fired storage water heater manufacturers would have to convert approximately 76 percent of their commercial gas-fired storage water heater models at TSL 3. For hot water supply boilers, DOE estimates that small and large manufacturers would need to redesign similar proportions of their product offerings. Approximately 86 percent of the models currently produced by small CWH equipment manufacturers do not meet the level in TSL 3, while 79 percent of hot water supply boilers produced by large manufacturers do not meet the level in TSL 3.

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[127] The AHRI Directory is available at: *www.ahridirectory.org/ahriDirectory/pages/home.aspx.*

[128] The CEC database is available at: *http://www.energy.ca.gov/appliances/.*

[129] DOE's Compliance Certification Database is available at *http://www.regulations.doe.gov/certification-data/.*

[130] Hoovers Inc., Company Profiles, Various Companies (Available at: *www.hoovers.com/*).

Smaller manufacturers also stated that they lack the purchasing power of larger manufacturers. The purchasing power issue may be of particular concern to the four manufacturers that produce lower-efficiency hot water supply boilers, because many manufacturers would purchase heat exchangers to comply with the thermal efficiency level proposed in TSL 3. Few hot water supply boiler manufacturers produce condensing boiler heat exchangers domestically, and most condensing boiler heat exchangers are sourced from European companies. A condensing standard, as proposed in TSL 3, could require small manufacturers to purchase a greater proportion of their components. This could exacerbate any pricing disadvantages small businesses experience due to lower purchasing volumes.

Issue 35: DOE seeks comment on the number of small manufacturers, on the potential impacts of amended energy conservation standards on those small manufacturers, and on the severity of those impacts.

3. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being proposed in this document.

4. Significant Alternatives to the Rule

The discussion in section V.B.2.d analyzes impacts on small businesses that would result from DOE's proposed rule. In addition to the other TSLs being considered, the NOPR TSD includes a regulatory impact analysis (RIA) which addresses the following policy alternatives: (1) No change in standard; (2) consumer rebates; (3) consumer tax credits; (4) voluntary energy efficiency programs; and (5) early replacement.[131] While these alternatives may mitigate to some varying extent the economic impacts on small entities compared to the proposed standards, DOE does not intend to consider these alternatives further because in several cases, they would not be feasible to implement without authority and funding from Congress, and in all cases, DOE has determined that the energy savings of these regulatory alternatives are from 70 to 80 percent smaller than those that would be expected to result from adoption of the proposed standard levels. Accordingly, DOE is declining to adopt any of these alternatives and is proposing the standards set forth in this document. (See chapter 17 of the NOPR TSD for further detail on the policy alternatives DOE considered.)

Additional compliance flexibilities may be available through other means. For example, individual manufacturers may petition for a waiver of the applicable test procedure. (See 10 CFR 431.401.) Further, EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8,000,000 may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. Additionally, Section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent "special hardship, inequity, or unfair distribution of burdens" that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 430, subpart E, and part 1003 for additional details.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of CWH equipment must certify to DOE that their equipment complies with any applicable energy conservation standards. In certifying compliance, manufacturers must test their equipment according to the applicable DOE test procedures for CWH equipment, including any amendments adopted for those test procedures on the date that compliance is required. DOE has established regulations for the certification and recordkeeping requirements for all covered commercial consumer products and commercial equipment, including CWH equipment. 76 FR 12422 (March 7, 2011); 80 FR 5099 (Jan. 30, 2015). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB Control Number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that the proposed rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. See 10 CFR part 1021, App. B, B5.1(b); 1021.410(b) and App. B, B(1)–(5). The proposed rule fits within this category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this proposed rule. DOE's CX determination for this proposed rule is available at *http://energy.gov/nepa/categorical-exclusion-cx-determinations-cx/*.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA (42 U.S.C. 6297). Therefore, Executive Order 13132 requires no further action.

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[131] The early replacement option includes bulk government purchases, manufacturer promotions, utility incentives, and commercial consumer incentives.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *www.energy.gov/gc/office-general-counsel.*

Although this proposed rule, which proposes amended energy conservation standards for CWH equipment, does not contain a Federal intergovernmental mandate, it may require annual expenditures of $100 million or more by the private sector. Specifically, the proposed rule would likely result in a final rule that could require expenditures of $100 million or more, including: (1) Investment in research and development and in capital expenditures by CWH equipment manufacturers in the years between the final rule and the compliance date for the amended standards, and (2) incremental additional expenditures by consumers to purchase higher-efficiency CWH equipment, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of the NOPR and the "Regulatory Impact Analysis" section of the TSD for this proposed rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the proposed rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6313(a), this proposed rule would establish amended energy conservation standards for CWH equipment that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the "Regulatory Impact Analysis" section of the TSD for this proposed rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that the regulatory action in this document, which sets forth proposed amended energy conservation standards for CWH equipment, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are "influential scientific information," which the Bulletin defines as "scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions." *Id.* at 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The "Energy Conservation Standards Rulemaking Peer Review Report," dated February 2007, has been disseminated and is available at the following Web site: *www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.*

VII. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.* As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the building. Any person wishing to bring these devices into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific States and U.S. territories. Driver's licenses from the following States or territory will not be accepted for building entry, and one of the alternate forms of ID listed below will be required. DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the States of Minnesota, New York, or Washington (Enhanced licenses issued by these States are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=36.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Requests To Speak and Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this document, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Such persons may hand-deliver requests to speak to the address shown in the **ADDRESSES** section at the beginning of this document between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or email to: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121, or *Brenda.Edwards@ee.doe.gov.* Persons who wish to speak should include with their request a computer diskette or CD–ROM in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

DOE requests persons scheduled to make an oral presentation to submit an advance copy of their statements at least one week before the public meeting. DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building

Technologies Program. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the public meeting, interested parties may submit further comments on the proceedings, as well as on any aspect of the rulemaking, until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document and will be accessible on the DOE Web site. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1)

A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

Issue 1: DOE seeks comment on its tentative conclusions regarding the potential energy savings from analyzing amended standards for standby loss of commercial oil-fired storage water heaters and for thermal efficiency of commercial oil-fired instantaneous water heaters.

Issue 2: The agency assumes no growth in equipment efficiency in absence of new standards; however, DOE requests comment on expected changes over the analysis period in market share by energy efficiency level or average shipment-weighted efficiency for the analyzed CWH equipment classes in the no-new-standards case.

Issue 3: DOE seeks comment on its proposed revisions to notes to the table of energy conservation standards in 10 CFR 431.110.

Issue 4: DOE requests comment on its proposed changes to its certification, compliance, and enforcement regulations requiring the rated volume to be equal to the mean of the measured volumes in a sample.

Issue 5: DOE requests comment on its proposed modification of the maximum standby loss equations for electric storage and instantaneous water heaters to depend on rated volume instead of measured volume.

Issue 6: DOE requests comment on whether there are significant differences between storage water heaters and storage-type instantaneous water heaters that would justify analyzing these classes separately for amended energy conservations standards.

Issue 7: DOE requests comment on whether tankless water heaters and hot water supply boilers should be treated as separate equipment classes in DOE's energy conservation standards for CWH equipment and whether proposing the same standards incentivizes any switching in shipments from one equipment class to the other. Additionally, DOE requests feedback on what criteria should be used to distinguish between tankless water heaters and hot water supply boilers if separate equipment classes are established.

Issue 8: DOE seeks comment on its proposed equipment class structure, and whether any equipment classes are unnecessary or additional equipment classes are needed.

Issue 9: DOE seeks comment on its tentative conclusion that none of the identified technology options are proprietary, and if any technologies are proprietary, requests additional information regarding proprietary designs and patented technologies.

Issue 10: DOE seeks comment on the representative CWH equipment used in the engineering analysis.

Issue 11: DOE seeks comment on all efficiency levels analyzed for CWH equipment, including thermal efficiency and standby loss levels. In particular, DOE is interested in the feasibility of the max-tech thermal efficiency levels and standby loss levels, including whether these efficiency levels can be achieved using the technologies screened-in during the screening analysis (see section IV.B), and whether higher efficiencies are achievable using technologies that were screened-in during the screening analysis. DOE is also interested in the feasibility of achieving the analyzed standby loss levels using the identified technology options.

Issue 12: DOE seeks input on the reduction in standby loss of gas-fired storage water heaters from the technology options for which DOE estimated standby loss levels (*i.e.*, varying insulation type and thickness, electromechanical flue dampers, and mechanical draft) and the technology options for which DOE did not have sufficient data to develop an estimate (including baffling).

Issue 13: DOE seeks comment on its methodology for manufacturer production cost, manufacturer selling price, and shipping cost estimates for each equipment class and efficiency level.

Issue 14: DOE seeks comment on its proposed method for modifying the maximum standby loss equations for commercial gas-fired storage water heaters and residential-duty storage water heaters.

Issue 15: DOE seeks comment on its approach to convert the thermal efficiency and standby loss levels analyzed for residential-duty commercial water heaters to UEF.

Issue 16: DOE seeks comment on the percentages of shipments allocated to the distribution channels relevant to each equipment class.

Issue 17: DOE requests comment on the estimated market and sector weights for shipments by equipment class.

Issue 18: DOE requests comment on the development of markups at each point in the distribution chain and the overall markup by equipment class.

Issue 19: DOE seeks comment on the assumptions used in determining the venting costs for the relevant types of CWH equipment.

Issue 20: DOE seeks comment on the percentage of installations using polypropylene venting materials in this industry and any limitations such venting has as to maximum available diameters or other limitations.

Issue 21: DOE seeks comment on the installation labor and labor to remove equipment and venting in this analysis.

Issue 22: DOE seeks comment on the overall installed costs by TSL for each equipment class as shown in the Average LCC and PBP Results tables found in section V.B.1.a, Table V.4 through Table V.14.

Issue 23: DOE seeks comment on maintenance labor estimates used in the LCC analysis and the assumption that maintenance costs remain constant as efficiency increases.

Issue 24: DOE seeks comment on the findings of the repair costs of CWH equipment, labor estimates for repairs, and the estimated rate of component repair.

Issue 25: DOE seeks input on actual historical shipments for the three equipment classes for which no historical shipments data exist—residential-duty gas-fired storage water heaters, gas-fired tankless water heaters, and gas-fired hot water supply boilers.

Issue 26: DOE seeks input on the methodology used to estimate the historical shipments for the residential-duty gas-fired storage water heater, gas-fired tankless water heater, and hot water supply boiler equipment classes, particularly in the absence of actual historic shipments data.

Issue 27: DOE seeks input on commercial consumer switching between equipment types or fuel types, and specific information that DOE can use to model such commercial consumer switching. For example, if a commercial consumer switches away from commercial gas-fired storage water heaters, to what type of equipment is the commercial consumer most likely to switch, and is it a one-for-one switch or some other ratio?

Issue 28: DOE seeks input on the shares of shipments allocated to commercial and to residential consumer types.

Issue 29: DOE seeks input on whether the shipment model should assume that multifamily buildings are the only residential building stock in which CWH equipment is used, or whether DOE should continue to use total residential building stocks.

Issue 30: DOE seeks input on the possibility that rebound effect would be significant, and if so, estimates of the impact of the rebound effect on NES.

Issue 31: DOE requests comment on whether manufacturers would incur any product conversion costs (*i.e.*, substantial redesign work or research and development) related to the standby loss levels analyzed in this NOPR.

Issue 32: DOE seeks comment on its assessment of amended standards' potential impacts on direct employment.

Issue 33: DOE seeks comment on its assessment of amended standards' potential impacts on manufacturing capacity.

Issue 34: DOE requests comment on whether the classification of unacceptable blowing agents in the EPA's SNAP final rule will affect the insulating properties of foam insulation used in CWH equipment analyzed in this NOPR. Specifically, DOE seeks data that show the difference in thermal resistivity (*i.e.*, R-value per inch) between insulation currently used in storage water heaters and insulation that would be compliant with the regulations amended in the SNAP final rule, if currently used blowing agents are classified as unacceptable.

Issue 35: DOE seeks comment on the number of small manufacturers, on the potential impacts of amended energy conservation standards on those small manufacturers, and on the severity of those impacts.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects

10 CFR Part 429

Confidential business information, Energy conservation, Imports, Measurement standards, Reporting and recordkeeping requirements.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Test procedures, Reporting and recordkeeping requirements.

Issued In Washington, DC, on April 19, 2016.

David Friedman,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend parts 429 and 431 of chapter II, subchapter D of title 10, Code of Federal Regulations, as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.44 is amended by:
■ a. Adding paragraph (b)(1)(ii)(C) [paragraph (b) proposed at 81 FR 28588 (May 9, 2016)];
■ b. Revising paragraph (c)(2);
■ c. Redesignating existing paragraphs (c)(3) and (4) as (c)(4) and (5); and
■ d. Adding new paragraph (c)(3).

The additions and revisions read as follows:

§ 429.44 Commercial water heating equipment.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(C) Any represented value of the rated storage volume must be equal to the mean of the measured storage volumes of all the units within the sample.

* * * * *

(c) * * *

(2) Pursuant to § 429.12(b)(13), a certification report for equipment manufactured before (*date 3 years after publication in the* ***Federal Register*** *of the final rule establishing amended energy conservation standards for commercial water-heating equipment*) must include the following public equipment-specific information:

(i) Commercial electric storage water heaters: The standby loss in percent per hour (%/h) and the measured storage volume in gallons (gal).

(ii) Commercial gas-fired and oil-fired storage water heaters: The thermal efficiency in percent (%), the standby loss in British thermal units per hour (Btu/h), the rated storage volume in gallons (gal), and the fuel input rate in Btu/h rounded to the nearest 1,000 Btu/h.

(iii) Commercial water heaters and hot water supply boilers with storage capacity greater than 140 gallons: The thermal efficiency in percent (%); whether the storage volume is greater than 140 gallons (Yes/No); whether the tank surface area is insulated with at least R–12.5 (Yes/No); whether a standing pilot light is used (Yes/No); for gas or oil-fired water heaters, whether the basic model has a flue damper or fan assisted combustion (Yes/No); and, if applicable, pursuant to 10 CFR 431.110 of this chapter, the standby loss in British thermal units per hour (Btu/h) and measured storage volume in gallons (gal).

(iv) Commercial gas-fired and oil-fired instantaneous water heaters with storage capacity greater than or equal to 10 gallons and gas-fired and oil-fired hot water supply boilers with storage capacity greater than or equal to 10 gallons: The thermal efficiency in percent (%); the standby loss in British thermal units per hour (Btu/h); the rated storage volume in gallons (gal); the fuel input rate in Btu/h rounded to the nearest 1,000 Btu/h; whether a submerged heat exchanger is used (Yes/No); and whether flow through the water heater is required to initiate burner ignition (Yes/No).

(v) Commercial gas-fired and oil-fired instantaneous water heaters with storage capacity less than 10 gallons and gas-fired and oil-fired hot water supply boilers with storage capacity less than 10 gallons: The thermal efficiency in percent (%), the rated storage volume in gallons (gal), and the fuel input rate in British thermal units per hour (Btu/h) rounded to the nearest 1,000 Btu/h.

(vi) Commercial electric instantaneous water heaters with storage capacity greater than or equal to 10 gallons: The thermal efficiency in percent (%), the standby loss in percent per hour (%/h), and the measured storage volume in gallons (gal).

(vii) Commercial electric instantaneous water heaters with storage capacity less than 10 gallons: The thermal efficiency in percent (%) and the measured storage volume in gallons (gal).

(viii) Commercial unfired hot water storage tanks: The thermal insulation (*i.e.*, R-value) and stored volume in gallons (gal).

(3) Pursuant to § 429.12(b)(13), a certification report for equipment manufactured on or after (*date 3 years after publication in the* ***Federal Register*** *of the final rule establishing*

amended energy conservation standards for commercial water-heating equipment) must include the following public equipment-specific information:

(i) Commercial electric storage water heaters: The standby loss in percent per hour (%/h) and the rated storage volume in gallons (gal).

(ii) Commercial gas-fired and oil-fired storage water heaters: The thermal efficiency in percent (%), the standby loss in British thermal units per hour (Btu/h), the rated storage volume in gallons (gal), and the fuel input rate in British thermal units per hour (Btu/h) rounded to the nearest 1,000 Btu/h.

(iii) Commercial water heaters and hot water supply boilers with storage capacity greater than 140 gallons: The thermal efficiency in percent (%), whether the storage volume is greater than 140 gallons (Yes/No); whether the tank surface area is insulated with at least R–12.5 (Yes/No); whether a standing pilot light is used (Yes/No); for gas or oil-fired water heaters, whether the basic model has a flue damper or fan assisted combustion (Yes/No); and, if applicable, pursuant to 10 CFR 431.110 of this chapter, the standby loss in British thermal units per hour (Btu/h) and rated storage volume in gallons (gal).

(iv) Commercial gas-fired and oil-fired instantaneous water heaters with storage capacity greater than or equal to 10 gallons and gas-fired and oil-fired hot water supply boilers with storage capacity greater than or equal to 10 gallons: The thermal efficiency in percent (%), the standby loss in British thermal units per hour (Btu/h), the rated storage volume in gallons (gal), and the fuel input rate in Btu/h rounded to the nearest 1,000 Btu/h; whether a submerged heat exchanger is used (Yes/No); and whether flow through the water heater is required to initiate burner ignition (Yes/No).

(v) Commercial gas-fired and oil-fired instantaneous water heaters with storage capacity less than 10 gallons and gas-fired and oil-fired hot water supply boilers with storage capacity less than 10 gallons: The thermal efficiency in percent (%), the rated storage volume in gallons (gal), and the fuel input rate in British thermal units per hour (Btu/h) rounded to the nearest 1,000 Btu/h.

(vi) Commercial electric instantaneous water heaters with storage capacity greater than or equal to 10 gallons: The thermal efficiency in percent (%), the standby loss in percent per hour (%/h), and the rated storage volume in gallons (gal).

(vii) Commercial electric instantaneous water heaters with storage capacity less than 10 gallons: The thermal efficiency in percent (%) and the rated storage volume in gallons (gal).

(viii) Commercial unfired hot water storage tanks: The thermal insulation (*i.e.,* R-value) and rated storage volume in gallons (gal).

* * * * *

■ 3. Section 429.134 is amended by revising paragraph (m)(2) [proposed at 81 FR 28588 (May 9, 2016)] to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(m) * * *

(2) Verification of rated storage volume. The following provisions apply to commercial water heating equipment manufactured on or after (*date 3 years after publication in the* ***Federal Register*** *of the final rule establishing amended energy conservation standards for commercial water-heating equipment*). The storage volume of the basic model will be measured pursuant to the test requirements of 10 CFR part 431 for each unit tested. The mean of the measured values will be compared to the rated storage volume as certified by the manufacturer. The rated value will be considered valid only if the measurement is within five percent of the certified rating.

(i) If the rated storage volume is found to be within 5 percent of the mean of the measured value of storage volume, then that value will be used as the basis for calculation of the maximum standby loss for the basic model.

(ii) If the rated storage volume is found to vary more than 5 percent from the mean of the measured values, then the mean of the measured values will be used as the basis for calculation of the maximum standby loss for the basic model.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 4. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 5. Section 431.110 is revised to read as follows:

§ 431.110 Energy conservation standards and their effective dates.

(a) Each commercial storage water heater, instantaneous water heater, and hot water supply boiler[1] (except for residential-duty commercial water heaters) must meet the applicable energy conservation standard level(s) as follows:

Equipment	Size	Energy conservation standards[a]	
		Minimum thermal efficiency (equipment manufactured on and after October 9, 2015) (%)	Maximum standby loss (equipment manufactured on and after October 29, 2003)[b]
Electric storage water heaters	All	N/A	$0.30 + 27/V_m$ (%/h).
Gas-fired storage water heaters	≤155,000 Btu/h	80	$Q/800 + 110(V_r)^{1/2}$ (Btu/h).
	>155,000 Btu/h	80	$Q/800 + 110(V_r)^{1/2}$ (Btu/h).
Oil-fired storage water heaters	≤155,000 Btu/h	80	$Q/800 + 110(V_r)^{1/2}$ (Btu/h).
	>155,000 Btu/h	80	$Q/800 + 110(V_r)^{1/2}$ (Btu/h).
Electric instantaneous water heaters[c]	<10 gal	80	N/A.
	≥10 gal	77	$2.30 + 67/V_m$ (%/h).
Gas-fired instantaneous water heaters and hot water supply boilers.	<10 gal	80	N/A.
	≥10 gal	80	$Q/800 + 110(V_r)^{1/2}$ (Btu/h).

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[1] Any packaged boiler that provides service water that meets the definition of "commercial packaged boiler" in subpart E of this part, but does not meet the definition of "hot water supply boiler" in subpart G, must meet the requirements that apply to it under subpart E.

Equipment	Size	Energy conservation standards[a]	
		Minimum thermal efficiency (equipment manufactured on and after October 9, 2015) (%)	Maximum standby loss (equipment manufactured on and after October 29, 2003)[b]
Oil-fired instantaneous water heater and hot water supply boilers.	<10 gal	80	N/A.
	≥10 gal	78	$Q/800 + 110(V_r)^{1/2}$ (Btu/h).

[a] V_m is the measured storage volume, and V_r is the rated volume, both in gallons. Q is the fuel input rate in Btu/hr.

[b] Water heaters and hot water supply boilers having more than 140 gallons of storage capacity need not meet the standby loss requirement if (1) the tank surface area is thermally insulated to R–12.5 or more; (2) a standing pilot light is not used; and (3) for gas or oil-fired storage water heaters, they have a flue damper or fan assisted combustion.

[c] The compliance date for energy conservation standards for electric instantaneous water heaters is January 1, 1994.

(b) Each unfired hot water storage tank manufactured on or after October 29, 2003, must have a minimum thermal insulation of R–12.5.

(c) Each commercial water heater, instantaneous water heater, unfired hot water storage tank and hot water supply boiler[2] (except for residential-duty commercial water heaters) manufactured on or after (*date 3 years after publication in the* **Federal Register** *of the final rule establishing amended energy conservation standards for commercial water-heating equipment*) must meet the applicable energy conservation standard level(s) as follows:

Equipment	Specifications	Energy conservation standards[a]	
		Minimum thermal efficiency	Maximum standby loss[b]
Electric storage water heaters	All	N/A	$0.84 \times [0.30 + 27/V_r]$ (%/h).
Gas-fired storage water heaters	All[c]	95	$0.63 \times [Q/800 + 110(V_r)^{1/2}]$ (Btu/h).
Oil-fired storage water heaters	All[c]	80	$Q/800 + 110(V_r)^{1/2}$ (Btu/h).
Electric instantaneous water heaters	<10 gal[c]	80	N/A.
	≥10 gal	77	$2.30 + 67/V_r$ (%/h).
Gas-fired instantaneous water heaters and hot water supply boilers			
Instantaneous water heaters (other than storage-type) and hot water supply boilers.	<10 gal	94	N/A.
	≥10 gal	94	$Q/800 + 110(V_r)^{1/2}$ (Btu/h).
Storage-type instantaneous water heaters.	≥10 gal	95	$0.63 \times [Q/800 + 110(V_r)^{1/2}]$ (Btu/h).
Oil-fired instantaneous water heaters and hot water supply boilers.	<10 gal	80	N/A.
	≥10 gal	78	$Q/800 + 110(V_r)^{1/2}$ (Btu/h).

[a] V_r is the rated volume in gallons. Q is the fuel input rate in Btu/h.

[b] Water heaters and hot water supply boilers having more than 140 gallons of storage capacity need not meet the standby loss requirement if (1) the tank surface area is thermally insulated to R–12.5 or more; (2) a standing pilot light is not used; and (3) for gas or oil-fired storage water heaters, they have a flue damper or fan assisted combustion.

[c] These standards apply to commercial water heating equipment that does not meet the definition of "residential-duty commercial water heater." See paragraph (c) of this section for energy conservation standards applicable to residential-duty commercial water heaters.

(d) Each residential-duty commercial water heater manufactured prior to (*date 3 years after publication in the* ***Federal Register*** *of the final rule establishing amended energy conservation standards for commercial water-heating equipment*) must meet the applicable energy conservation standard level(s) as follows:

Equipment	Specifications[a]	Draw pattern	Uniform energy factor[b]
Gas-fired Storage	>75 kBtu/hr and	Very Small	$0.3261 - (0.0006 \times V_r)$.
	≤105 kBtu/hr and	Low	$0.5219 - (0.0008 \times V_r)$.
	≤120 gal	Medium	$0.5585 - (0.0006 \times V_r)$.
		High	$0.6044 - (0.0005 \times V_r)$.
Oil-fired Storage	>105 kBtu/hr and	Very Small	$0.3206 - (0.0006 \times V_r)$.
	≤140 kBtu/hr and	Low	$0.5577 - (0.0019 \times V_r)$.
	≤120 gal	Medium	$0.6027 - (0.0019 \times V_r)$.
		High	$0.5446 - (0.0018 \times V_r)$.

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[2] Any packaged boiler that provides service water that meets the definition of "commercial packaged boiler" in subpart E of this part, but does not meet the definition of "hot water supply boiler" in subpart G, must meet the requirements that apply to it under subpart E.

Equipment	Specifications [a]	Draw pattern	Uniform energy factor [b]
Electric Instantaneous	>12 kW and ≤58.6 kW and ≤2 gal.	[Reserved]	[Reserved].

[a] Additionally, to be classified as a residential-duty commercial water heater, a commercial water heater must meet the following conditions: (1) If the water heater requires electricity, it must use a single-phase external power supply; and (2) the water heater must not be designed to heat water to temperatures greater than 180 °F.

[b] V_r is the rated storage volume in gallons.

(e) Each residential-duty commercial water heater manufactured on and after (*date 3 years after publication in the* ***Federal Register*** *of the final rule establishing amended energy conservation standards for commercial water-heating equipment*) must meet the applicable energy conservation standard level(s) as follows:

Equipment	Specifications [a]	Draw pattern	Uniform energy factor [b]
Gas-fired Storage	>75 kBtu/h and	Very Small	0.4618 − (0.0010 × Vr).
	≤105 kBtu/h and	Low	0.6626 − (0.0009 × Vr).
	≤120 gal	Medium	0.6996 − (0.0007 × Vr).
		High	0.7311 − (0.0006 × Vr).
Oil-fired storage	>105 kBtu/h and	Very Small	0.3206 − (0.0006 × V_r).
	≤140 kBtu/h and	Low	0.5577 − (0.0019 × V_r).
	≤120 gal	Medium	0.6027 − (0.0019 × V_r).
		High	0.5446 − (0.0018 × V_r).
Electric Instantaneous	>12 kW and ≤58.6 kW and ≤2 gal.	[Reserved]	[Reserved].

[a] Additionally, to be classified as a residential-duty commercial water heater, a commercial water heater must meet the following conditions: (1) If the water heater requires electricity, it must use a single-phase external power supply; and (2) the water heater must not be designed to heat water to temperatures greater than 180 °F.

[b] V_r is the rated storage volume in gallons.

[FR Doc. 2016–12178 Filed 5–27–16; 8:45 am]

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Part III

Department of Education

34 CFR Parts 200 and 299

Elementary and Secondary Education Act of 1965, As Amended by the Every Student Succeeds Act—Accountability and State Plans; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 200 and 299

RIN 1810–AB27

[Docket ID ED–2016–OESE–0032]

Elementary and Secondary Education Act of 1965, As Amended by the Every Student Succeeds Act—Accountability and State Plans

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations implementing programs under title I of the Elementary and Secondary Education Act of 1965 (ESEA) to implement changes to the ESEA by the Every Student Succeeds Act (ESSA) enacted on December 10, 2015. The Secretary also proposes to update the current ESEA general regulations to include requirements for the submission of State plans under ESEA programs, including optional consolidated State plans.

DATES: We must receive your comments on or before August 1, 2016.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Are you new to the site?"
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Meredith Miller, U.S. Department of Education, 400 Maryland Avenue SW., Room 3C106, Washington, DC 20202–2800.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Meredith Miller, U.S. Department of Education, 400 Maryland Avenue SW., Room 3C106, Washington, DC 20202–2800.

Telephone: (202) 401–8368 or by email: *Meredith.Miller@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: On December 10, 2015, President Barack Obama signed the ESSA into law. The ESSA reauthorizes the ESEA, which provides Federal funds to improve elementary and secondary education in the Nation's public schools. ESSA builds on ESEA's legacy as a civil rights law and seeks to ensure every child, regardless of race, income, background, or where they live has the chance to make of their lives what they will. Through the reauthorization, the ESSA made significant changes to the ESEA for the first time since the ESEA was reauthorized through the No Child Left Behind Act of 2001 (NCLB), including significant changes to title I.

In particular, the ESSA significantly modified the accountability requirements of the ESEA. Whereas the ESEA, as amended by the NCLB, required a State educational agency (SEA) to hold schools accountable based on results on statewide assessments and one other academic indicator, the ESEA, as amended by the ESSA, requires each SEA to have an accountability system that is State-determined and based on multiple measures, including at least one measure of school quality or student success and, at a State's discretion, a measure of student growth. The ESSA also significantly modified the requirements for differentiating among schools and the basis on which schools must be identified for further comprehensive or targeted support and improvement. Additionally, the ESEA, as amended by the ESSA, no longer requires a particular sequence of escalating interventions in title I schools that are identified and continue to fail to make adequate yearly progress (AYP). Instead, it gives SEAs and local educational agencies (LEAs) discretion to determine the evidence-based interventions that are appropriate to address the needs of identified schools.

In addition to modifying the ESEA requirements for State accountability systems, the ESSA also modified and expanded upon the ESEA requirements for State and LEA report cards. The ESEA, as amended by the ESSA, continues to require that report cards be concise, presented in an understandable and uniform format, and, to the extent practicable, in a language that parents can understand, but now also requires that they be developed in consultation with parents and that they be widely accessible to the public. The ESEA, as amended by the ESSA, also requires that report cards include certain information that was not required to be included on report cards under the ESEA, as amended by the NCLB, such as information regarding per-pupil expenditures of Federal, State, and local funds; the number and percentage of students enrolled in preschool programs; where available, the rate at which high school graduates enroll in postsecondary education programs; and information regarding the number and percentage of English learners achieving English language proficiency. In addition, the ESEA, as amended by the ESSA, requires that report cards include certain information for subgroups for which information was not previously required to be reported, including homeless students, students in foster care, and students with a parent who is a member of the Armed Forces.

Further, the ESEA, as amended by the ESSA, authorizes an SEA to submit, if it so chooses, a consolidated State plan or consolidated State application for covered programs, and authorizes the Secretary to establish, for each covered program, the descriptions, information, assurances, and other material required to be included in a consolidated State plan or consolidated State application.

We are proposing these regulations to provide clarity and support to SEAs, LEAs, and schools as they implement the ESEA, as amended by the ESSA—particularly, the ESEA requirements regarding accountability systems, State and LEA report cards, and consolidated State plans—and to ensure that key requirements in title I of the ESEA, as amended by the ESSA, are implemented consistent with the purpose of the law: "to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps."

Summary of the Major Provisions of This Regulatory Action: As discussed in greater depth in the *Significant Proposed Regulations* section of this document, the proposed regulations would:

- Establish requirements for accountability systems under section 1111(c) and (d) of the ESEA, as amended by the ESSA, including requirements regarding the indicators used to annually meaningfully differentiate all public schools, the identification of schools for comprehensive or targeted support and improvement, and the development and implementation of improvement plans, including evidence-based interventions, in schools that are so identified;

- Establish requirements for State and LEA report cards under section 1111(h) of the ESEA, as amended by the ESSA, including requirements regarding the timeliness and format of such report cards, as well as requirements that clarify report card elements that were not required under the ESEA, as amended by the NCLB; and
- Establish requirements for consolidated State plans under section 8302 of the ESEA, as amended by the ESSA, including requirements for the format of such plans, the timing of submission of such plans, and the content to be included in such plans.

Please refer to the *Significant Proposed Regulations* section of this preamble for a detailed discussion of the major provisions contained in the proposed regulations.

Costs and Benefits: The Department believes that the benefits of this regulatory action outweigh any associated costs to SEAs and LEAs, which would be financed with grant funds. These benefits would include a more flexible, less complex and less costly accountability framework for the implementation of the ESEA that respects State and local decision-making; the efficient and effective collection and dissemination of a wide range of education-related data that would inform parents, families, and the public about the performance of their schools and support State and local decision-making; and an optional, streamlined consolidated application process that would promote the comprehensive and coordinated use of Federal, State, and local resources to improve educational outcomes for all students and all subgroups of students. Please refer to the *Regulatory Impact Analysis* section of this document for a more detailed discussion of costs and benefits. Consistent with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this action is economically significant and, thus, is subject to review by the OMB under the order.

Invitation to Comment: We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could refine estimates of the rule's impacts, reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in room 3C106, 400 Maryland Ave. SW., Washington, DC, between 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Particular Issues for Comment: We request comments from the public on any issues related to these proposed regulations. However, we particularly request the public to comment on, and provide additional information regarding, the following issues. Please provide a detailed rationale for each response you make.

- Whether the suggested options for States to identify "consistently underperforming" subgroups of students in proposed § 200.19 would result in meaningful identification and be helpful to States; whether any additional options should be considered; and which options, if any, in proposed § 200.19 should not be included or should be modified. (§ 200.19)
- Whether we should include additional or different options, beyond those proposed in this NPRM, to support States in how they can meaningfully address low assessment participation rates in schools that do not assess at least 95 percent of their students, including as part of their State-designed accountability system and as part of plans schools develop and implement to improve, so that parents and teachers have the information they need to ensure that all students are making academic progress. (§ 200.15)
- Whether, in setting ambitious long-term goals for English learners to achieve English language proficiency, States would be better able to support English learners if the proposed regulations included a maximum State-determined timeline (*e.g.,* a timeline consistent with the definition of "long-term" English learners in section 3121(a)(6) of the ESEA, as amended by the ESSA), and if so, what should the maximum timeline be and what research or data supports that maximum timeline. (§ 200.13)
- Whether we should retain, modify, or eliminate in the title I regulations the provision allowing a student who was previously identified as a child with a disability under section 602(3) of the Individuals with Disabilities Education Act (IDEA), but who no longer receives special education services, to be included in the children with disabilities subgroup for the limited purpose of calculating the Academic Achievement indicator, and, if so, whether such students should be permitted in the subgroup for up to two years consistent with current title I regulations, or for a shorter period of time. (§ 200.16)
- Whether we should standardize the criteria for including children with disabilities, English learners, homeless children, and children who are in foster care in their corresponding subgroups within the adjusted cohort graduation rate, and suggestions for ways to standardize these criteria. (§ 200.34)

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: Upon request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

On December 10, 2015, President Barack Obama signed the ESSA, which reauthorizes the ESEA, into law. Through the reauthorization, the ESSA made significant changes to the ESEA, including significant changes to title I of the ESEA. In particular, the ESSA significantly modified the accountability requirements of the ESEA, and modified and expanded upon the ESEA requirements for State and LEA report cards.

Further, the ESEA, as amended by the ESSA, authorizes an SEA to submit, if it so chooses, a consolidated State plan or consolidated State application for covered programs and authorizes the Secretary to establish, for each covered program, the descriptions, information, assurances, and other material required to be included in a consolidated State plan or consolidated State application.

The Department is proposing these regulations to provide clarity and support to SEAs, LEAs, and schools as they implement the ESEA requirements regarding accountability systems, State and LEA report cards, and consolidated State plans. The proposed regulations are further described under the *Significant Proposed Regulations* section of this NPRM.

Public Participation

On December 22, 2015, the Department published a request for information in the **Federal Register** soliciting advice and recommendations from the public on the implementation of title I of the ESEA, as amended by ESSA. We received 369 comments. We also held two public meetings with stakeholders—one on January 11, 2016, in Washington, DC and one on January 18, 2016, in Los Angeles, California—at which we heard from over 100 speakers, regarding the development of regulations, guidance, and technical assistance. In addition, Department staff have held more than 100 meetings with education stakeholders and leaders across the country to hear about areas of interest and concern regarding implementation of the new law.

Significant Proposed Regulations

The Secretary proposes to amend the regulations implementing programs under title I of the ESEA (part 200) and to amend the ESEA general regulations to include requirements for the submission of State plans under ESEA programs, including optional consolidated State plans (part 299).

To implement the changes made to the ESEA by the ESSA, we propose to remove certain sections of the current regulations and replace those regulations, where appropriate, with the proposed regulations. Specifically, we are proposing to—

- Remove and reserve § 200.7;
- Remove §§ 200.12 to 200.22 of the current regulations, replace them with proposed §§ 200.12 to 200.22, and add proposed §§ 200.23 and 200.24;
- Remove §§ 200.30 to 200.42 of the current regulations and replace them with proposed §§ 200.30 to 200.37; and
- Add proposed §§ 299.13 to 299.19.

We discuss the proposed substantive changes by section. The section numbers in the headings of the following discussion are the section numbers in the proposed regulations. Generally, we do not address proposed changes that are technical or otherwise minor in effect.

Section 200.12 Single Statewide Accountability System

Statute: Section 1111(c) of the ESEA, as amended by the ESSA, requires that each State plan describe a single statewide accountability system for all public schools that is based on the challenging State academic standards for reading/language arts and mathematics, described in section 1111(b)(1), in order to improve student academic achievement and school success. These provisions take effect beginning with the 2017–2018 school year, as described in section 5(e)(1)(B) of the ESSA. The system must also include the following key elements:

- Long-term goals and measurements of interim progress, in accordance with section 1111(c)(4)(A);
- Indicators, in accordance with section 1111(c)(4)(B);
- Annual meaningful differentiation of all public schools, in accordance with section 1111(c)(4)(C); and
- Identification of schools to implement comprehensive or targeted support and improvement plans, in accordance with section 1111(c)(4)(D) and (d)(2)(A)(i).

Section 1111(c) also requires that State systems include long-term goals and measurements of interim progress for all students and specific subgroups of students, indicators that are applied to all students and specific subgroups of students, and a system of annual meaningful differentiation that is based on all indicators in the system, for all students and specific subgroups of students; that a State determine a minimum number of students necessary to carry out any title I, part A requirements that require disaggregation of information by each subgroup of students; and that the State annually measure the academic achievement of at least 95 percent of all students and 95 percent of the students in each subgroup of students on the State's reading/language arts and mathematics assessments required under section 1111(b)(2). Section 1111(c)(5) also specifies that accountability provisions for public charter schools must be overseen in accordance with State charter school law. Finally, section 1111(d) requires States to ensure LEAs and schools develop and implement school improvement plans in schools that are identified for comprehensive or targeted support and improvement by the State accountability system.

Current Regulations: Section 200.12 of the title I regulations provides a high-level summary of the statutory accountability requirements in the ESEA, as amended by the NCLB, which took effect for the 2002–2003 school year.

Proposed Regulations: Proposed § 200.12 would replace the current regulations with regulations that summarize the requirements for accountability systems in the ESEA, as amended by the ESSA. The proposed regulations would require that each State plan describe that the State has developed and will implement a single statewide accountability system to improve student academic achievement. The proposed regulations would also require a State's accountability system to: Be based on the challenging State academic standards and academic assessments; include all public schools in the State, including public charter schools; and improve student academic achievement and school success. In addition, the proposed regulations include the general requirements for States to meet the key elements of accountability and improvement systems consistent with the ESEA, as amended by the ESSA, which are described in greater detail in subsequent sections of the proposed regulations:

- Long-term goals and measurements of interim progress under proposed § 200.13;
- Indicators under proposed § 200.14;
- Inclusion of all students and each subgroup of students, and all public elementary and secondary schools consistent with proposed §§ 200.15 through 200.17;
- Annual meaningful differentiation of schools under proposed § 200.18;
- Identification of schools for comprehensive and targeted support and improvement under proposed § 200.19; and
- The process for ensuring development and implementation of comprehensive and targeted support and improvement plans, including evidence-based interventions, consistent with proposed §§ 200.21 through 200.24.

Finally, proposed § 200.12 would include the statutory requirement that the ESEA's accountability provisions for public charter schools be overseen in accordance with State charter school law.

Reasons: The ESEA, as amended by the ESSA, significantly changes the requirements for school accountability and improvement systems from those previously included in the ESEA, as amended by the NCLB. In particular, the ESSA eliminates the requirement for schools, LEAs, and States to make AYP and replaces it with requirements for new statewide accountability systems that are based on different requirements for all public schools. These requirements do not apply to private schools, including private schools that receive title I equitable services. With the new school accountability and improvement provisions under the ESSA set to take effect for the 2017–2018 school year, it is critical for the Department to update the regulations to reflect these changes and provide clarity for States in how to implement them. In effect, proposed § 200.12 would serve as a table of contents for each required component of the accountability system, which would be described in greater detail in subsequent sections of the proposed regulations.

These clarifications are necessary to ensure that States clearly understand the fundamental components of the new accountability systems under the ESSA that will take effect for the 2017–2018 school year, and that a description of each such component will be required in their State plans submitted to the Department.

Section 200.13 Long-Term Goals and Measurements of Interim Progress

Statute: Section 1111(c)(4)(A)(i)(I) and (c)(4)(A)(ii) of the ESEA, as amended by the ESSA, requires each State to establish ambitious long-term goals, and measurements of interim progress toward those goals, for specific indicators, for all students and for each subgroup of students described in section 1111(c)(2): Economically disadvantaged students, students from major racial and ethnic groups, children with disabilities, and English learners. These goals and measurements of interim progress must be set, at a minimum, for improved academic achievement (as measured by proficiency on State assessments in reading/language arts and mathematics), for improved high school graduation rates (as measured by the four-year adjusted cohort graduation rate), and for increases in the percentage of English learners making progress toward English language proficiency (as measured by the English language proficiency assessments required in section 1111(b)(2)(G)) within a State-determined timeline. In addition, States may establish long-term goals and measurements of interim progress for graduation rates as measured by extended-year adjusted cohort graduation rates, but such goals and interim measurements must be more rigorous than those set based on the four-year adjusted cohort graduation rate.

Section 1111(c)(4)(A)(i)(II) also requires that the State's ambitious long-term goals for achievement and graduation rates use the same multi-year length of time for all students and each subgroup of students. This is explained further below.

Finally, section 1111(c)(4)(A)(i)(III) specifies that a State's goals for subgroups of students must take into account the improvement needed among subgroups that must make greater progress in order to close achievement and graduation rate gaps in the State.

Current Regulations: Various sections of the current title I regulations describe the role of goals and annual measurable objectives (AMOs) in the State accountability system required by the ESEA, as amended by the NCLB, and require each State to establish a definition of AYP. These sections essentially repeat the NCLB, with the exception of § 200.19 regarding the four-year adjusted cohort graduation rate, which was added to the title I regulations in 2008.

Proposed Regulations: Proposed § 200.13 would primarily incorporate into regulation the statutory requirements under the ESEA, as amended by the ESSA, for State-designed long-term goals and measurements of interim progress for academic achievement, graduation rates, and progress in achieving English language proficiency. The proposed regulations also would clarify certain provisions to support effective State and local implementation of the statutory requirements.

Goals for Academic Achievement and Graduation Rates

Proposed § 200.13 would require each State to—

- Establish ambitious long-term goals and measurements of interim progress for academic achievement that are based on grade-level proficiency on the State's academic assessments and set separately for reading/language arts and mathematics;
- In setting long-term goals and measurements of interim progress for academic achievement, apply the same high standards of academic achievement to all students and each subgroup of students, except students with the most significant cognitive disabilities who are assessed based on alternate academic achievement standards, consistent with section 1111(b)(1);
- Establish ambitious long-term goals and measurements of interim progress for graduation rates that are based on the four-year adjusted cohort graduation rate and, if a State chooses to use an extended-year rate as part of its Graduation Rate indicator under proposed § 200.14, the extended-year adjusted cohort graduation rate, except that goals based on the extended-year rate must be more rigorous than goals based on the four-year rate;
- Set long-term goals and measurements of interim progress for academic achievement and graduation rates for all students and separately for each subgroup of students that expect greater rates of improvement for subgroups that need to make more rapid progress to close proficiency and graduation rate gaps in the State; and
- Use the same multi-year timeline in setting long-term goals for academic achievement and graduation rates for all students and for each subgroup (*e.g.,* if the goal for all students is to improve academic achievement by a certain percentage over 10 years, then the goal for children with disabilities must also be set over 10 years, even if the subgroup is expected to improve by a greater percentage relative to all students over that timeframe).

Goals for Progress in Achieving English Language Proficiency

The proposed regulations would require each State to—

- Establish ambitious long-term goals and measurements of interim progress for English learners toward attaining English language proficiency, as measured by the State's English language proficiency assessment, that set expectations for each English learner to make annual progress toward attaining English language proficiency and to attain English language proficiency; and
- Determine the State's long-term goals and measurements of interim progress for English learners by developing a uniform procedure for setting such goals and measurements of interim progress that would be applied consistently to all English learners in the State, must take into account the student's English language proficiency level, and may also consider one or more of the following student-level factors at the time of a student's identification as an English learner: (1) Time in language instruction educational programs; (2) grade level; (3) age; (4) Native language proficiency level; and (5) limited or interrupted formal education, if any.

Reasons: The proposed regulations would primarily replace obsolete provisions relating to goals and progress measures within State accountability systems to reflect changes required by the ESEA, as amended by the ESSA. In addition, the proposed regulations would clarify requirements related to goals for academic achievement, particularly for students with the most significant cognitive disabilities, as well as goals for English learners toward attaining English language proficiency.

Goals for Academic Achievement and Graduation Rates

Under section 1111(b)(2)(B)(ii), State assessments must provide information to students, parents, and educators about whether individual students are performing at their grade level. This determination provides valuable information about whether a student is receiving the support he or she needs to meet the challenging State academic standards and is on track to graduate ready to succeed in college and career, and if not, to help identify areas in which the student would benefit from additional support. This information also helps States and LEAs identify statewide proficiency gaps when establishing the State's goals and measurements of interim progress, as required under section 1111(c)(4)(A)(i)(III). Goals based on grade-level proficiency would provide consistency across the accountability system, as the statute requires the Academic Achievement indicator described in section 1111(c)(4)(B)(i)(I) to be based on a measure of proficiency against the challenging State academic standards. Therefore, the proposed regulations would clarify that the long-term goals a State establishes must be based on a measure of grade-level proficiency on the statewide assessments required under section 1111(b)(2) and must be set separately for reading/language arts and mathematics.

Section 1111(b)(1) also requires that all students be held to the same challenging State academic standards, except for students with the most significant cognitive disabilities who are assessed based on alternate academic achievement standards, as permitted under section 1111(b)(2)(D)(i). To ensure that all students are treated equitably and expected to meet the same high standards, and that all schools are held accountable for meeting these requirements, proposed § 200.13 would clarify that long-term goals must be based on the same academic achievement standards and definition of "proficiency" for all students, with the exception of students with the most significant cognitive disabilities who take an alternate assessment aligned with alternate academic achievement standards.

Finally, to provide relevant, meaningful information to districts, schools, and the public about the level of performance and improvement that is expected, proposed § 200.13 would require a State to set long-term goals and measurements of interim progress for graduation rates that are based on the four-year adjusted cohort graduation rate, as well as the extended-year adjusted cohort graduation rate if such a rate were used in the State's Graduation Rate indicator described in section 1111(c)(4)(B)(iii). Given that the graduation rate could impact whether a school is identified for support and improvement, and related interventions, it is critical to require the State to set long-term goals and measurements of interim progress for this measure in order to establish clear expectations and support all schools in the State in increasing the percentage of students graduating high school.

Goals for Progress in Achieving English Language Proficiency

Because the requirement for progress in achieving English language proficiency goals has been added to title I in the ESEA, as amended by the ESSA, we propose to explain and clarify how States can meet this requirement in proposed § 200.13. For English learners to succeed in meeting the challenging State academic standards, it is critical for these students to attain proficiency in speaking, listening, reading, and writing in English, as recognized in section 1111(b)(1)(F), including the ability to successfully make academic progress in classrooms where the language of instruction is English, as recognized in the definition of "English learner" in section 8101(20). For these reasons, proposed § 200.13 would clarify that States' long-term goals must include both annual progress toward English language proficiency and actual attainment of English language proficiency for all English learners.

Recent data have highlighted the growing numbers of school-aged English learners, particularly in States and LEAs with relatively little experience in serving such students previously. The Census Bureau's American Community Survey (ACS) data from 2013 show that California, Florida, Illinois, New York, and Texas enroll 60 percent of the Nation's English learners, but the growth rate in the English learner population in other States has exceeded that of these five. For example, ACS data show that from 2010 to 2013, the English learner population increased by 21 percent in West Virginia, 13 percent in Hawaii and North Dakota, and 12 percent in Iowa. In addition, some States have experienced large increases of certain English learner subgroups over a short period of time. Alaska, the District of Columbia, New Hampshire, Oklahoma, South Dakota, Iowa, Maine, and Nebraska all experienced more than a 16-percent increase in their immigrant population during the 2010 to 2013 timeframe.

Given the diversity of the English learner population, illustrated in the examples above, a reasonable timeframe for schools to support one English learner in attaining proficiency in English may be too rigorous or too lenient an expectation for another English learner. Setting the same long-term goals and measurements of interim progress for all English learners in the State may fail to account for these differences in the English learner population and would result in goals that are inappropriate for some students. Furthermore, the time it takes an English learner to attain proficiency can be affected by multiple factors, such as age, level of English proficiency, and educational experiences in a student's native language.[1] Thus, proposed § 200.13(c) would require States to consider students' English language proficiency level in setting goals and measurements of interim progress and allow the consideration of additional research-based student factors. The list of student characteristics in proposed § 200.13 is based not only on research but also on input from grantees and experts during administration of the former title III requirement for annual measurable achievement objectives (AMAOs). The ESEA, as amended by the NCLB, required that those AMAOs (which included progress toward and attainment of English language proficiency) reflect the amount of time an individual child had been enrolled in a language instruction educational program. Researchers, however, have found that the other factors outlined in proposed § 200.13 are important factors that also should be included in setting goals for progress or proficiency.[2]

For these reasons, proposed § 200.13(c) would require each State to establish a uniform procedure for setting long-term goals and measurements of interim progress for English learners that can be applied consistently and equitably to all English learners and schools with such students for accountability purposes, and that consider a student's English language proficiency level, as well as additional research-based student characteristics at a State's discretion (*i.e.,* time in language instruction educational programs, grade level, age, native language proficiency level, and limited or interrupted formal education) in determining the most appropriate timeline and goals for attaining English language proficiency for each English learner, or category of English learner. Though the State's procedure must be consistently applied for all English learners and consider the same student-level characteristics determined by the State, this approach would allow differentiation of goals for an individual English learner, or for categories of English learners that share similar characteristics, based on English language proficiency level, as well as factors such as grade level and educational background, thereby recognizing the varied needs of the English learner population.

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[1] See, for example, Collier, V.P. (1995). "Acquiring a second language for school." Directions in Language & Education, 1(4); García-Vázquez, E., Vázquez, L.A., López, I.C., & Ward, W. (1997). "Language proficiency and academic success: Relationships between proficiency in two languages and achievement among Mexican-American students." Bilingual Research Journal, 21(4), 334–347; and Center for Public Education (2007). "Research Review: What research says about preparing English language learners for academic success," pp. 6–7.

[2] See, for example, Cook, G., Linquanti, R., Chinen, M., & Jung, H. (2012). "National evaluation of Title III implementation supplemental report—Exploring approaches to setting English language proficiency performance criteria and monitoring English learner progress." U.S. Department of Education, Office of Planning, Evaluation, and Policy Development, Policy and Program Studies Service, pp. 68–69.

Finally, proposed § 200.13 would require a State's long-term goals to expect each English learner to attain English language proficiency within a period of time after the student's identification as an English learner. This period of time could be informed by existing academic research on the typical time necessary for English learners to attain English language proficiency,[3] and we encourage States to consider the requirement in section 3121(a)(6) of the ESEA, as amended by the ESSA, that subgrantees receiving title III funds report the number and percentage of "long-term" English learners (*i.e.,* those that do not attain English language proficiency within five years of initial classification), in order to align the related title I and title III requirements. The long-term goals established by each State would not change the SEA and LEA's obligation to assist individual English learners in overcoming language barriers in a reasonable period of time. Given these considerations, we are particularly interested in receiving comments on whether, in setting ambitious long-term goals to achieve English language proficiency, States would be better able to support English learners if the proposed regulations include a maximum State-determined timeline, and if so, what the maximum timeline should be—including any research or data to support the timeline—in order to ensure that State accountability systems effectively promote progress in attaining English language proficiency for these students.

Section 200.14 Accountability Indicators

Statute: Section 1111(c)(4)(B) of the ESEA, as amended by the ESSA, requires each State to include, at a minimum, four distinct indicators of student performance, measured for all students and separately for each subgroup of students, for each school in its statewide accountability system. Although five types of indicators are described in the statute, only four indicators must apply to each public school in a State because two of the required indicators apply only to schools in certain grade spans.

- For all public schools in the State, section 1111(c)(4)(B)(i) requires an indicator of academic achievement, based on the long-term goals established under section 1111(c)(4)(A), that measures proficiency on the statewide assessments in reading/language arts and mathematics required under section 1111(b)(2)(B)(v)(I). At the State's discretion, this indicator may also include a measure of student growth on such assessments, for high schools only.
- For elementary and middle schools in the State, section 1111(c)(4)(B)(ii) requires an indicator that measures either student growth or another valid and reliable statewide academic indicator that allows for meaningful differentiation in school performance.
- For all high schools in the State, section 1111(c)(4)(B)(iii) requires an indicator, based on the long-term goals established under section 1111(c)(4)(A), that measures the four-year adjusted cohort graduation rate, and, at the State's discretion, the extended-year adjusted cohort graduation rate.
- For all public schools in the State, section 1111(c)(4)(B)(iv) requires an indicator measuring progress in achieving English language proficiency, within a State-determined timeline, for all English learners. This indicator must be measured using the English language proficiency assessments required under section 1111(b)(2)(G), for all English learners in each of grades 3 through 8, and in the grade in which English learners are assessed to meet the requirements of section 1111(b)(2)(B)(v)(I) to assess students once in high school.
- For all public schools in the State, section 1111(c)(4)(B)(v) requires at least one valid, reliable, and comparable indicator of school quality or student success. Such an indicator may include measures of student or educator engagement, student access to and completion of advanced coursework, postsecondary readiness, school climate and safety, or any other measure a State chooses that meets the requirements of section 1111(c)(4)(B)(v). Section 1111(c)(4)(B)(v)(I)(aa) requires that any school quality or student success indicator chosen by the State allow for meaningful differentiation of school performance, and section 1111(c)(4)(B)(v)(I)(bb) requires that the school quality or success indicator(s) be valid, reliable, comparable, and statewide (except that such indicator(s) may vary for each grade span).

Current Regulations: Various sections of the current title I regulations describe the measures used in the State accountability systems required by the ESEA, as amended by the NCLB.

Proposed Regulations: Proposed § 200.14 would clarify the statutory requirements in the ESSA for States to include, at a minimum, four distinct indicators for each school that measure performance for all students and separately for each subgroup of students under proposed § 200.16(a)(2).

Proposed § 200.14(a)(2) would clarify that each State must use the same measures within each indicator for all schools, except that States may vary the measures within the Academic Progress indicator and the School Quality or Student Success indicator or indicators by grade span as would be described in proposed § 200.14(c)(2). Proposed § 200.14 also would describe each of the five indicators that are required, at a minimum, as part of a State's accountability system under section 1111(c) of the ESEA, as amended by the ESSA.

Academic Achievement Indicator

Proposed § 200.14(b)(1) would:

- Require, for all schools, the Academic Achievement indicator to equally measure grade-level proficiency on the reading/language arts and mathematics assessments required under section 1111(b)(2)(B)(v)(I);

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[3] See, for example, Hakuta, K., Goto Butler, Y., & Witt, D. (2000). "How long does it take English learners to attain proficiency?" University of California Linguistic Minority Research Institute Policy Report 2000–1; MacSwan, J., & Pray, L. (2005). "Learning English bilingually: Age of onset of exposure and rate of acquisition among English language learners in a bilingual education program." Bilingual Research Journal, 29(3), 653–678; Motamedi, J.G. (2015). "Time to reclassification: How long does it take English language learners in the Washington Road Map school districts to develop English proficiency?" U.S. Department of Education, Institute of Education Sciences; and Slavin, R.E., Madden, N.A., Calderón, M.E., Chamberlain, A., & Hennessy, M. (2011). "Reading and language outcomes of a five-year randomized evaluation of transitional bilingual education." Educational Evaluation and Policy Analysis, 33(1), 47–58.

- Reiterate that the indicator must include the performance of at least 95 percent of all students and 95 percent of all students in each subgroup consistent with proposed § 200.15; and
- Clarify that, for high schools, this indicator may also measure, at the State's discretion, student growth based on the reading/language arts and mathematics assessments required under section 1111(b)(2)(B)(v)(I).

Academic Progress Indicator

Proposed § 200.14(b)(2) would require, for all elementary and middle schools, the Academic Progress indicator to measure either student growth based on the reading/language arts and mathematics assessments required under section 1111(b)(2)(B)(v)(I), or another academic measure that meets the requirements of proposed § 200.14(c).

Graduation Rate Indicator

Proposed § 200.14(b)(3) would:

- Require, for all high schools, the Graduation Rate indicator to measure the four-year adjusted cohort graduation rate; and
- Allow States to also measure the extended-year adjusted cohort graduation rate as part of the Graduation Rate indicator.

Progress in Achieving English Language Proficiency Indicator

Proposed § 200.14(b)(4) would:

- Require, for all schools, the Progress in Achieving English Language Proficiency indicator to be based on English learner performance on the English language proficiency assessment required under section 1111(b)(2)(G) in each of grades 3 through 8 and in the grades for which English learners are assessed in high school to meet the requirements of section 1111(b)(2)(B)(v)(I);
- Require that the Progress in Achieving English Language Proficiency indicator take into account a student's English language proficiency level and, at a State' discretion, additional student-level characteristics of English learners in the same manner used by the State under proposed § 200.13; use objective and valid measures of student progress such as student growth percentiles (although the indicator may also include a measure of English language proficiency); and align with the State-determined timeline for attaining English language proficiency under proposed § 200.13.

School Quality or Student Success Indicators

Proposed § 200.14(b)(5) would:

- Require, for all schools, the School Quality or Student Success indicator or indicators to meet the requirements of proposed § 200.14(c); and
- Reiterate the statutory language that the indicator or indicators may differ by each grade span and may include one or more measures of: (1) Student access to and completion of advanced coursework, (2) postsecondary readiness, (3) school climate and safety, (4) student engagement, (5) educator engagement, or any other measure that meets the requirements in the proposed regulations.

Requirements for Indicator Selection

Additionally, under proposed § 200.14(c), a State would be required to ensure that each measure it selects to include within an indicator:

- Is valid, reliable, and comparable across all LEAs in the State;
- Is calculated the same for all schools across the State, except that the measure or measures selected within the indicator of Academic Progress or any indicator of School Quality or Student Success may vary by grade span;
- Can be disaggregated for each subgroup of students; and
- Includes a different measure than the State uses for any other indicator.

Under proposed § 200.14(d), a State would be required to ensure that each measure it selects to include as an Academic Progress or School Quality or Student Success indicator is supported by research finding that performance or progress on such measure is likely to increase student academic achievement or, for measures used within indicators at the high school level, graduation rates. Finally, under proposed § 200.14(e), a State would be required to ensure that each measure it selects to include as an Academic Progress or School Quality or Student Success indicator aids in the meaningful differentiation among schools under proposed § 200.18 by demonstrating varied results across all schools.

Reasons: Given the new statutory requirements in the ESEA, as amended by the ESSA, and the increased role for States to establish systems of annual meaningful differentiation, we propose to revise the current regulations to reflect the new requirements and clarify how States may establish and measure each indicator in order to ensure these indicators thoughtfully inform annual meaningful differentiation of schools (described further in proposed § 200.18).

Although the statute provides a brief description of each indicator, States will need additional guidance as they consider how to design and implement school accountability systems that will meet their intended purpose of improving student academic achievement and school success. Because the indicators are used to identify schools for comprehensive and targeted support and improvement, including interventions to support improved student outcomes in these schools, it is essential to ensure that the requirements for each indicator are clear so that differentiation and identification of schools is unbiased, accurate, and consistent across the State.

Proposed § 200.14(a) would reinforce and clarify the statutory requirement that all indicators must measure performance for all students and separately for each subgroup of students, and that the State must use the same measures within each indicator for all schools, except for the Academic Progress indicator and the indicator(s) of School Quality or Student Success, which may use different measures among elementary, middle, and high schools. These proposed requirements would ensure that indicators include all students similarly across the State, including historically underserved populations, so that all students are held to the same high expectations. Further, these proposed requirements would ensure the indicators remain comparable across the State in order to promote fairness and validity, as schools will be held accountable on the basis of their students' performance on each indicator.

While the proposed regulations would require all States to include all of the required indicators, disaggregated by each subgroup, for annual meaningful differentiation of schools in the 2017–2018 school year, including the new indicators under the ESSA (*i.e.,* Academic Progress, Progress in Achieving English Language Proficiency, and School Quality or Student Success indicators), we recognize that some States may want to update their accountability systems as new data become available. Accordingly, the proposed regulations would not preclude States from adding measures to their accountability systems over time that they currently do not collect or are unable to calculate, or from replacing measures over time, if particular measures of interest are not ready for the 2017–2018 school year, or if the State would like to gather additional input prior to including these measures in the accountability system for purposes of differentiation and identification of schools.

Academic Achievement Indicator

Under section 1111(b)(2)(B)(ii) of the ESEA, as amended by the ESSA, State assessments must provide information about whether individual students are performing at their grade level. This provides valuable information to students, parents, educators, and the public about whether all students are receiving the support they need to meet the challenging State academic standards and are on track to graduate college- and career-ready. It also ensures that students needing extra support to meet the challenging State academic standards can be identified—especially as school performance on the Academic Achievement indicator would be a substantial part of annual meaningful differentiation of schools under proposed § 200.18 and identification of low-performing schools, including those with low-performing subgroups, for improvement under proposed § 200.19. Accordingly, it is important to clarify that the measure of proficiency on those assessments included in the Academic Achievement indicator must reflect this grade-level determination, and that reading/language arts and mathematics must be equally considered within the indicator.

Progress in Achieving English Language Proficiency Indicator

In order for English learners to succeed in meeting the challenging State academic standards, it is critical for them to attain proficiency in speaking, listening, reading, and writing in English, as recognized in section 1111(b)(1)(F), including academic English proficiency (*i.e.,* the ability to successfully achieve in classrooms where the language of instruction is English) as recognized in research and in the definition of "English learner" in section 8101(20).[4] For these reasons, proposed § 200.13 would clarify that States' long-term goals should include both attainment of English language proficiency and annual progress toward English language proficiency for all English learners.

Similarly, proposed § 200.14(b)(4) would clarify how a State measures progress in achieving English language proficiency for all English learners for annual meaningful differentiation. The proposed regulation would provide States flexibility to develop a specific measure for this purpose, while ensuring that States use objective, valid, and consistent measures of student progress. Critically, the proposed regulations would require an objective and valid measure that English learners are attaining, or are on track to attain, English language proficiency in a reasonable time period, consistent with the State-determined timeline in proposed § 200.13. As the Progress in Achieving English Language Proficiency indicator would receive substantial weight in annual meaningful differentiation under proposed § 200.18 and could affect which schools are identified for support, it is important for States to design this indicator in ways that are valid and reliable and provide an accurate determination of English learners' progress toward achieving proficiency in English. Finally, the indicator chosen by the State must include a student's English language proficiency level, as well as additional student characteristics that are used, at a State's discretion, in the English learner-specific long-term goals and measurements of interim progress, for the reasons discussed previously in proposed 200.13(c) and to provide consistency across the components of State accountability systems.

Requirements for Indicator Selection

Proposed § 200.14(c) would reiterate that all indicators included in the accountability system must be valid, reliable, and comparable across all LEAs in the State, and that each included measure must be calculated in the same way for all schools. It would also prevent a State from using the same indicators more than once. For example, a State must choose a different indicator to measure school quality or student success than it uses to measure academic achievement.

Proposed § 200.14(e) would require that the Academic Progress and School Quality or Student Success indicator produce varied results across all schools in order to support the statutory requirements for meaningful differentiation and long-term student success. These proposed requirements are designed to ensure that the indicators provide meaningful information about a school's performance, enhancing the information provided by other indicators and improving the ability of the system to differentiate between schools. In this way, the Academic Progress and School Quality or Student Success indicators can provide a more holistic picture of a school's performance and, when selected thoughtfully, support a State in meeting the statutory requirement that these indicators allow for "meaningful differentiation." The proposed parameters would help improve the validity of annual meaningful differentiation and support States' identification of schools most in need of support and improvement. If a State chose an indicator that led to consistent results across schools—such as average daily attendance, which is often quite high even in the lowest-performing schools—it would not allow states to meaningfully differentiate between schools for the purposes of identifying schools in need of comprehensive and targeted support and improvement.

Finally, proposed § 200.14(d) would ensure that a State selects indicators of Academic Progress and School Quality or Student Success that are supported by research showing that performance or progress on such measures is positively related to student achievement or, in the case of measures used within indicators at the high school level, graduation rates. For example, a State might include at least one of the following School Quality or Student Success indicators that examine, for all students and disaggregated for each subgroup of students:

- "Student access to and completion of advanced coursework" through a measure of advanced mathematics course-taking (*e.g.,* the percentage of middle school students enrolled in algebra, or of high school students enrolled in calculus);
- "Postsecondary readiness" through a measure of college enrollment following high school graduation or the rate of non-remedial postsecondary courses taken;
- "School climate and safety" through a robust, valid student survey that measures multiple domains (*e.g.,* student engagement, safety, and school environment); or
- "Student engagement" through a measure of chronic absenteeism based on the number of students that miss a significant portion (*e.g.,* 15 or more school days or 10 percent or more of total school days) of the school year.

Further, since measures of "postsecondary readiness" may not be available as an indicator in elementary schools, a State could consider using an analogous measure in its accountability system, such as "kindergarten readiness" or another measure that would capture important outcomes or learning experiences in the early grades.

These requirements would support the purpose of title I—to "provide all children significant opportunity to receive a fair, equitable, and high-quality education and to close educational achievement gaps"—by requiring States to use measures that are likely to close achievement gaps and are related to improvements in critical student outcomes. It would also create consistency across components of the accountability system described in proposed § 200.12; the Academic Progress and School Quality or Student Success indicators would both provide additional information to help a State differentiate between, and identify, schools in a valid and reliable way, and also be relevant to its other indicators and support the State's efforts to attain its long-term goals.

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[4] See, for example, Halle, T., Hair, E., Wandner, L., McNamara, M., and Chien, N. (2012). "Predictors and outcomes of early versus later English language proficiency among English language learners." Early Childhood Research Quarterly Volume 27, Issue 1; and Graham, J. (1987). "English language proficiency and the prediction of academic success." TESOL Quarterly, Vol. 21, No. 3, pp. 505–521.

Section 200.15 Participation in Assessments and Annual Measurement of Achievement

Statute: Section 1111(c)(4)(E) of the ESEA, as amended by the ESSA, requires each State, for the purpose of school accountability determinations, to measure the achievement of not less than 95 percent of all students, and 95 percent of all students in each subgroup of students, who are enrolled in public schools on the annual statewide assessments in reading/language arts and mathematics required by section 1111(b)(2)(B)(v)(I). The statute further ensures that this requirement is taken into account when determining proficiency on the Academic Achievement indicator by specifying that the denominator used for such calculations must include at least 95 percent of all students and 95 percent of students in each subgroup enrolled in the school. Each State also must provide a clear and understandable explanation of how the participation rate requirement will be factored into its accountability system.

Current Regulations: Section 200.20(c)(1) of the current regulations specifies that, for an LEA or school to make AYP, not less than 95 percent of all students and 95 percent of the students in each subgroup who are enrolled in the LEA or school must take the statewide academic assessments. Title I schools that fail to make AYP due to the participation rate requirement can be identified as schools in improvement. Section 200.20(c)(2) of the current regulations further states that this 95 percent participation requirement does not authorize a State, LEA, or school to systematically exclude five percent of students from the assessment requirements of the ESEA. The regulations also allow a school to count students with the most significant cognitive disabilities who take an assessment based on alternate academic achievement standards as participants, and to count recently arrived English learners (defined in § 200.6(b)(4)(iv) of the current regulations as an English learner "who has attended schools in the United States for less than twelve months") who take the English language proficiency assessment or the reading/language arts assessment as participants on the State's reading/language arts assessment (even if they do not actually take the State's reading/language arts assessment). Section 200.20(d)(1) further allows States to average participation rate data from up to three school years in making a determination of whether the school, LEA, or State assessed 95 percent of all students and students in each subgroup.

Proposed Regulations: Proposed § 200.15 would replace current § 200.15 with regulations that update and clarify assessment participation rate requirements to reflect new statutory requirements, while retaining elements of current § 200.20 that are consistent with the ESEA, as amended by the ESSA. Proposed § 200.15(a) would incorporate the ESSA requirement that States annually measure the achievement of at least 95 percent of all students, and 95 percent of all students in each subgroup of students under proposed § 200.16(a)(2), who are enrolled in each public school. Participation rates would be calculated separately on the assessments in reading/language arts and mathematics required under section 1111(b)(2)(B)(v)(I). Proposed § 200.15(b)(1) would incorporate the statutory requirements related to the denominator that must be used for calculating the Academic Achievement indicator under proposed § 200.14 for purposes of annual meaningful differentiation of schools, while proposed § 200.15(b)(2) would establish minimum requirements for factoring the participation rate requirement for all students and each subgroup of students into the State accountability system. Specifically, the State would be required to take one of the following actions for a school that misses the 95 percent participation requirement for all students or one or more student subgroups: (1) Assign a lower summative rating to the school, described in proposed § 200.18; (2) assign the lowest performance level on the State's Academic Achievement indicator, described in proposed §§ 200.14 and 200.18; (3) identify the school for targeted support and improvement under proposed § 200.19(b)(1); or (4) another equally rigorous State-determined action, as described in its State plan, that will result in a similar outcome for the school in the system of annual meaningful differentiation under proposed § 200.18 and will lead to improvements in the school's assessment participation rate so that it meets the 95 percent participation requirement. Proposed § 200.15(c)(1) would further require schools that miss the 95 percent participation rate for all students or for one or more subgroups of students to develop and implement improvement plans that address the reason or reasons for low participation in the school and include interventions to improve participation rates in subsequent years, except that schools identified for targeted support and improvement due to low participation rates would not be required to develop a separate plan than the one required under proposed § 200.22. The improvement plans would be developed in partnership with stakeholders, including parents, include one or more strategies to address the reason or reasons for low participation rates in the school and improve participation rates in subsequent years, and be approved and monitored by the LEA. In addition, proposed § 200.15(c)(2) would require each LEA with a significant number of schools missing the 95 percent participation rate for all students or for one or more subgroups of students to develop and implement an improvement plan that includes additional actions to support the effective implementation of school-level plans to improve low assessment participation rates, which would be reviewed and approved by the State.

Finally, proposed § 200.15(d) would require a State to include in its report card a clear explanation of how it will factor the 95 percent participation rate requirement into its accountability system. This section would also retain current regulatory requirements related to: (1) Not allowing the systematic exclusion of students from required assessments; (2) counting as participants students with the most significant cognitive disabilities who take alternate assessments based on alternate academic achievement standards; and (3) counting as participants recently arrived English learners who take either the State's English language proficiency assessment or the reading/language arts assessment.

Reasons: The ESEA, as amended by the ESSA, continues to require the participation of all students in the annual statewide assessments in reading/language arts and mathematics and includes this requirement as a significant component of State-developed accountability systems. In particular, ensuring that results on these statewide assessments are available for all students is essential for meeting accountability system requirements related to the establishment and measurement of interim progress toward State-designed, long-term goals under section 1111(c)(4)(A); the development and annual measurement of the indicators under section 1111(c)(4)(B); the annual meaningful differentiation of school performance under section 1111(c)(4)(C); and the identification of schools for improvement under section 1111(c)(4)(D) and (d)(2)(A)(i). The proposed regulations reflect the critical importance of continuing to ensure that all students participate in annual statewide academic assessments so that parents and teachers have the information they need to help all students meet the challenging State academic standards and to maintain the utility of State accountability systems.

The proposed regulations would provide States with options to ensure that they meet the requirement in section 1111(c)(4)(E)(iii) by taking meaningful action to factor the 95 percent participation requirement into their accountability systems. Such action is essential to protect the credibility of a State's system of identifying schools in need of comprehensive or targeted support, enhance the validity of academic achievement information, and, most importantly, provide parents and educators with information to support all students in meeting the challenging State academic standards. These options suggest ways States may provide greater transparency and accurate, meaningful differentiation of schools to the public regarding low participation rates. In particular, the proposed options would ensure that failure to meet the 95 percent participation rate requirement is factored in the State's accountability system in a meaningful, publicly visible manner through a significant impact on a school's performance level or summative rating, identification for targeted support and improvement, or another equally rigorous, State-determined action, thus providing an incentive for the school to ensure that all students participate in annual State assessments. In addition to these options for factoring the participation rate requirement into the accountability system, the proposed regulations would ensure that all schools that miss the 95 percent participation rate develop plans to meaningfully address and improve assessment participation. The proposed regulations also would support State efforts to improve low participation rates by requiring LEAs with a significant number of schools that miss the 95 percent participation rate to develop separate LEA improvement plans that include additional actions to ensure the effective implementation of school-level plans.

Given the critical importance of assessing all students and subgroups of students as part of providing a strong foundation for each component of a State's accountability system, and in ensuring that parents and educators have information to support all students in meeting the challenging State academic standards, we are especially interested in receiving public comment on additional or different ways than those articulated in the proposed regulations to support States in ensuring that low assessment participation rates are meaningfully addressed as part of the State's accountability system, either as part of annual meaningful differentiation of schools to increase transparency around assessment participation rates or as part of school-level actions to improve such rates.

Section 200.16 Subgroups of students

Statute: Section 1111(c)(2) of the ESEA, as amended by the ESSA, delineates the required subgroups of students that must be included in a statewide accountability system:

- Economically disadvantaged students;
- Students from major racial and ethnic groups;
- Children with disabilities; and
- English learners.

Under the ESEA, as amended by the ESSA, subgroups of students are included for multiple purposes in a statewide accountability system. States are required to:

- Establish long-term goals and measurements of interim progress for achievement and graduation rates for each subgroup of students, as well as for progress in attaining English language proficiency for English learners, that take into account the improvement necessary to make progress in closing proficiency and graduation rate gaps as described in section 1111(c)(4)(A);
- Produce disaggregated subgroup data for each required accountability indicator and annually differentiate among all public schools based on these indicators as described in section 1111(h)(1)(C); and
- Identify schools with one or more consistently underperforming subgroups of students and schools in which one or more subgroups of students perform as poorly as any title I school that is among the lowest-performing in the State for targeted support and improvement as described in section 1111(c)(4)(C)(iii) and 1111(d)(2)(A)(i).

The ESEA, as amended by the ESSA, also includes accountability requirements that apply only to English learners, including specific provisions for recently arrived English learners who have been enrolled in a school in the United States for less than 12 months, and students who were previously identified as English learners.

Section 1111(b)(3)(A) provides a State that chooses not to include results on academic assessments for recently arrived English learners in the statewide accountability system in their first year enrolled in schools in the United States with two options:

- Under section 1111(b)(3)(A)(i), a State may exclude a recently arrived English learner from one administration of the reading/language arts assessment required under section 1111(b)(2)(A) and exclude a recently arrived English learner's results on the reading/language arts (if applicable), mathematics, or English language proficiency assessment for accountability purposes in the first year of the student's enrollment in schools in the United States; or
- Under section 1111(b)(3)(A)(ii), a State may assess and report a recently arrived English learner's results on the reading/language arts and mathematics assessments required under section 1111(b)(2)(A), but exclude those results for accountability purposes in the student's first year of enrollment in schools in the United States. In the second year of a recently arrived English learner's enrollment in schools in the United States, the State must include a measure of such student's growth on the reading/language arts and mathematics assessments for accountability purposes. In the third and each succeeding year of a recently arrived English learner's enrollment, a State must include a measure of such student's proficiency on the reading/language arts and mathematics assessments for accountability purposes.

The ESEA, as amended by the ESSA, also specifies a limited exception to the requirement that a subgroup of students include only students who meet the definition for inclusion in that subgroup. Under section 1111(b)(3)(B), a State may include, for up to four years after exiting the English learner subgroup, the assessment results of such a student previously identified as an English learner in calculating the Academic Achievement indicator in reading/language arts and mathematics for the English learner subgroup in its statewide accountability system.

Current Regulations: Various sections of the current title I regulations describe how subgroups of students are factored into the State accountability systems required by the ESEA, as amended by the NCLB.

Section 200.13 specifies that, as part of its definition of AYP, each State must apply the same AMOs to all required statutory subgroups of students (economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency), consistent with the regulations in § 200.7 for setting a minimum number of students, or n-size, for accountability and reporting that protects student privacy and produces valid and reliable accountability results. Section 200.19 requires disaggregated reporting on the other academic indicator in elementary and middle schools and on graduation rates, but does not require a State to use disaggregated subgroup data on the other academic indicator in elementary and middle schools for AYP determinations.

Current § 200.6 permits a State to exempt recently arrived English learners from one administration of the State's reading/language arts assessment. This section further defines a "recently arrived limited English proficient student" as a limited English proficient student who has attended schools in the United States (not including Puerto Rico) for less than 12 months. The regulations also require that a State and its LEAs report on State and district report cards the number of recently arrived English learners who are not assessed on the State's reading/language arts assessment, and clarify that a State must still include recently arrived English learners in its annual English language proficiency and mathematics assessments annually.

Section 200.20 permits a State to exclude the performance of a recently arrived English learner on a reading/language arts assessment (if administered to these students), mathematics assessment, or both, in determining AYP for a school or LEA. In other words, the performance of recently arrived English learners on content assessments may be excluded for accountability purposes for one administration of the content assessments.

Section 200.20 provides that in determining AYP for English learners and students with disabilities, a State may include in the English learner and students with disabilities subgroup, respectively, for up to two AYP determinations, scores of students who were previously English learners, but who have exited English learner status, and scores of students who were previously identified as students with a disability under section 602(3) of the IDEA, but who no longer receive services. The regulations require that, if a State includes students who were previously identified as English learners or students who were previously identified as students with a disability under section 602(3) of the IDEA in the respective subgroups in determining AYP, the State must include the scores of all such students. A State may, however, exclude such students from determining whether a subgroup meets the State's n-size within a particular school. A State also cannot include such former students in those subgroups for reporting on other data beyond AYP determinations (*e.g.,* for reporting participation rates).

Proposed Regulations: Proposed § 200.16 would replace the current regulations to clarify the statutory requirements under the ESEA, as amended by the ESSA, for how a State must include subgroups of students in its State accountability system. Specifically, the subgroups of students included in the proposed regulations are—

- Economically disadvantaged students;
- Students from each major racial and ethnic group;
- Children with disabilities, as defined in section 8101(4) of the ESEA, as amended by the ESSA; and
- English learners, as defined in section 8101(20) of the ESEA, as amended by the ESSA.

The proposed regulations would require each State to—

- Include each subgroup of students, separately, and the all students group, consistent with the State's minimum number of students, or n-size, when establishing long-term goals and measurements of interim progress under proposed § 200.13, measuring school performance on each of the indicators under proposed § 200.14, annually meaningfully differentiating schools under proposed § 200.18, and identifying schools for comprehensive and targeted support and improvement under proposed § 200.19.
- Include, at the State's discretion, for not more than four years after a student exits the English learner subgroup, the performance of a student previously identified as an English learner on the Academic Achievement indicator within the English learner subgroup for purposes of annual meaningful differentiation and identification of schools for support and improvement under proposed §§ 200.18 and 200.19, if the State includes all such students previously identified as English learners and does so for the same State-determined number of years.
- Include, with respect to an English learner with a disability for whom there are no appropriate accommodations for one or more domains of the English language proficiency assessment required under section 1111(b)(2)(G) because the disability is directly related to that particular domain (*e.g.,* a non-verbal English learner who cannot take the speaking portion of the assessment), as determined by the student's individualized education program (IEP) team or 504 team on an individualized basis, in measuring performance against the Progress in Achieving English Language Proficiency indicator, such a student's performance on the English language proficiency assessment based on the remaining domains in which it is possible to assess the student.
- Select a single statutory exemption from the two options included in section 1111(b)(3)(A) for the inclusion of recently arrived English learners in its accountability system and apply that exemption uniformly to all recently arrived English learners in the State; or
- Establish a uniform statewide procedure for determining how to apply the statutory exemption(s), if the State chooses to utilize either, or both, of the additional options included in section 1111(b)(3)(A) for the inclusion of recently arrived English learners in its accountability system. The proposed regulations would require a State, in establishing its uniform procedure, to take into account English language proficiency level and at its discretion, other student-level characteristics: Grade level, age, native language proficiency level, and limited or interrupted formal education. Each State's uniform procedure must be used to determine which, if any, exemption is appropriate for an individual English learner.
- Report annually on the number and percentage of recently arrived English learners included in accountability under the options described in section 1111(b)(3)(A).

Reasons: The ESEA, as amended by the ESSA, includes the same subgroups of students for purposes of a statewide accountability system as included under the ESEA, as amended by the NCLB. However, the ESSA changes the requirements for how the performance of students in each subgroup is included in the accountability system.

Proposed § 200.16 would clarify that a State must include each of the required subgroups of students separately when establishing long-term goals and measurements of interim progress, measuring school performance on each of the indicators, annually meaningfully differentiating schools, and identifying schools for comprehensive and targeted support and improvement. This clarifies that, for example, "students from major racial and ethnic groups" cannot be combined into one large subgroup, or super-subgroup, that includes students from all major racial and ethnic groups together as a substitute for considering each of the major racial and ethnic groups separately. Relying exclusively on a combined subgroup or a super-subgroup of students, instead of using such groups in addition to individual subgroups of students (if a State chooses to do so), may mask subgroup performance and conflate the distinct academic needs of different groups of students, inhibit the identification of schools with one or more consistently underperforming subgroups of students for targeted support and improvement, and limit information available to the public and parents, which is contrary to the statutory purpose to increase transparency, improve academic achievement, and hold schools accountable for the success of each subgroup.

Permitting the inclusion of former English learners in the English learner subgroup for up to four years after they have exited the English learner subgroup recognizes that the population of English learners in a school changes over time, as new English learners enter and others are reclassified as English language proficient. Including students previously identified as English learners in the subgroup would allow schools to be recognized for the progress they have made in supporting such students toward meeting the challenging State academic standards over time. However, selecting which former English learners to include, for which purposes, and for how long could undermine the fairness of accountability determinations across the State by encouraging the inclusion of higher-achieving former English learners only, or encouraging the inclusion of higher-achieving former English learners for longer periods of time than their lower-achieving peers. Further, the inclusion of former English learners should be used to increase school-level accountability and recognition for supporting the English learner subgroup, which is possible only if such students are counted within the subgroup for purposes of meeting the State's n-size.

For these reasons, proposed § 200.16 would clarify that if a State chooses to include former English learners in the English learner subgroup for up to four years, it must include all such former English learners in the subgroup for the same period of time. Further, former English learners must be included in determining whether the English learner subgroup meets the State's n-size in a particular school if a State chooses to include former English learners in the Academic Achievement indicator. The proposed regulations in § 200.16 would prohibit States from including former English learners in the English learner subgroup for purposes other than calculating and reporting on the Academic Achievement indicator. However, the proposed regulations would not prohibit States from establishing their own additional subgroups of students that include former English learners; we are aware that some States track the performance of "ever English learners"—students who have at any time been classified as English learners—and the proposed regulations would not prevent that practice.

The proposed regulations also would clarify that a State must include in the Progress in Achieving English Language Proficiency indicator the composite score of an English learner who has a disability that prevents that student from taking, even with appropriate accommodations, one or more domains of the English language proficiency assessment (speaking, listening, reading, or writing). The statute requires that each State assess all English learners annually in all four domains with the English language proficiency assessment, provide appropriate accommodations to an English learner who is also a child with a disability, and hold schools accountable for the performance of all English learners. We propose this regulation in recognition that, in a limited number of situations, the nature of a student's disability may make it impossible to validly assess the student in a particular domain of the English language proficiency assessment, even with appropriate accommodations. For example, it may not be possible, even with appropriate accommodations, to administer the speaking domain of the English language proficiency assessment to a non-verbal English learner. The purpose of the proposed regulation is to ensure that such a student is still included within the accountability system based on his or her performance on the remaining domains of the English language proficiency assessment.

To ensure that this exception is used only where necessary, proposed 200.16(b)(2) would require a State to include the performance of such a student in the Progress in Achieving English Language Proficiency indicator based on fewer than all four domains of language only where, as determined by the student's IEP or 504 team on an individualized basis, it is not possible, even with appropriate accommodations, for the student to participate in one or more domains of the English language proficiency assessment. A State may not adopt categorical rules for excluding English learners with certain disabilities from corresponding domains of the English language proficiency assessment; rather, just as the IEP or 504 team makes the decision about accommodations on an individualized basis, so too the decision as to domain participation would be made by the IEP or 504 team on an individualized basis, and only for this limited subset of English learners.

The ESSA provides new flexibility in how States may include the performance of recently arrived English learners on academic assessments in the statewide accountability system by their second year of enrollment in schools in the United States. Proposed § 200.16 would clarify that recently arrived English learners must be included in meaningful and appropriate ways, acknowledging the diversity and varying needs of this population. Research has demonstrated that a student's language proficiency, age, and educational background (such as amount of formal education and native language proficiency) have an impact on that student's development of English language proficiency and academic achievement.[5] While some recently arrived English learners may be best served by taking the reading/language arts assessment in their first year of enrollment in U.S. schools, and subsequently included in growth calculations for accountability in their second year of enrollment, this exemption may be inappropriate for other recently arrived English learners. Thus, based on the existing research base, the proposed regulations would clarify that States could either choose to apply one of the statutory options for exempting recently arrived English learners uniformly to all recently arrived English learners, or have the option of taking into account English language proficiency level and, at a State's discretion, certain additional student-level characteristics, including grade level, age, native language proficiency level, and limited or interrupted formal education, when determining which approach for inclusion in the accountability system is most appropriate for each recently arrived English learner. The proposed regulations would also clarify that a State must establish a uniform procedure for making this student-level determination, which will ensure fairness across LEAs and maximize the inclusion of recently arrived English learners, while recognizing the heterogeneity of such students, and promote the availability of comparable data for recently arrived English learners statewide.

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[5] Thomas, W. P., & Collier, V. (1997). "School effectiveness for language minority students." Washington, DC: National Clearinghouse for Bilingual Education.

Although the statute specifically states that the scores of students previously identified as an English learner may be included for up to four years for the calculation of the Academic Achievement indicator, the statute is silent about whether States may include the scores of a student who was previously identified as a child with a disability under section 602(3) of the IDEA. Accordingly, proposed § 200.16 would differ from the current title I regulations, which allow States to count the scores of students who were previously identified as a child with a disability for the purposes of making accountability determinations for up to two years. Unlike English learners, who all share a goal of attaining English language proficiency and exiting the English learner subgroup, the goal for all children with disabilities is not always or necessarily to exit special education services. The flexibility in the current title I regulations is intended to allow school assessment results for the student with disabilities subgroup to reflect the gains that students exiting the subgroup had made in academic achievement. As a result, however, the academic achievement results used for accountability for the students with disabilities subgroup in a particular school may not fully reflect the achievement of students receiving special education services. Because this provision was not included in the ESEA, as amended by ESSA, we seek specific comments on whether the provision to allow a student who was previously identified as a child with a disability under section 602(3) of the IDEA, but who no longer receives special education services, to be included in the children with disabilities subgroup for the limited purpose of calculating the Academic Achievement indicator should be retained or modified in proposed § 200.16, and if so, whether such students should be permitted in the subgroup for up to two years consistent with the current title I regulations, or for a shorter proposed period of time.

Section 200.17 Disaggregation of Data

Statute: Section 1111(c)(3) of the ESEA, as amended by the ESSA, requires each State to determine, in consultation with stakeholders, a minimum number of students (hereafter "n-size") that the State will use for accountability and reporting purposes. The n-size must be statistically sound, the same for all students and for each subgroup of students, and sufficient to not reveal any personally identifiable information.

Current Regulations: Section 200.7(a)(1) prohibits a State from using disaggregated data for reporting purposes or AYP determinations if the number of students in the subgroup is insufficient to yield statistically reliable information. Section 200.7(a)(2) requires a State, using sound statistical methods, to determine and justify in its consolidated State plan the minimum number of students sufficient to yield statistically reliable information for each purpose for which disaggregated data are used.

Section 200.7(a)(2)(i) requires a State, in determining its minimum subgroup size, to consider statistical reliability in setting such number to ensure, to the maximum extent practicable, that all students are included, particularly at the school level, for purposes of making accountability decisions. Section 200.7(a)(2)(ii) requires each State to revise its Consolidated State Application Accountability Workbook to include: (1) An explanation of how the State's minimum subgroup size meets the requirements of § 200.7(a)(2)(i); (2) an explanation of how other components of the State's AYP definition, in addition to the State's minimum subgroup size, interact to affect the statistical reliability of the data and to ensure maximum inclusion of all students and subgroups of students; and (3) information on the number and percentage of students and subgroups of students excluded from school-level accountability determinations. Section 200.7(a)(2)(iii) requires each State to submit a revised Consolidated State Application Accountability Workbook that incorporates the information required in § 200.7(a)(2)(ii) for technical assistance and peer review.

The section also clarifies that students excluded from disaggregation and accountability at the school level must be included at the level (LEA or State) for which the number of students is reliable. It stipulates that a State must apply section 444 of the General Education Provisions Act (the Family Educational Rights and Privacy Act of 1974) in determining whether disaggregated data would reveal personally identifiable information.

Proposed Regulations: Proposed § 200.17 would retain and reorganize the relevant requirements of current § 200.7, which would be removed and reserved, so that these requirements are incorporated directly into the sections of the proposed regulations pertaining to accountability, instead of regulations pertaining to assessments in current §§ 200.2 through 200.10. Further, proposed § 200.17 would update the requirements in current § 200.7 to reflect new statutory requirements that promote statistical reliability and inclusion of subgroups for accountability in the ESSA.

Proposed § 200.17 would also clarify data disaggregation requirements. Specifically, proposed § 200.17(a)(2)(iii) would clarify that, for the purposes of the statewide accountability system under section 1111(c), a State's n-size may not exceed 30 students, unless the State is approved to use a higher number after providing a justification, including data on the number and percentage of schools that are not held accountable for the results of each required subgroup of students in the State's system of annual meaningful differentiation, in its State plan. Proposed § 200.17(a)(2)(iv) would further clarify that the n-size sufficient to yield statistically reliable information for purposes of reporting under section 1111(h) may be lower than the n-size used for purposes of the statewide accountability system under section 1111(c).

Reasons: The ESEA, as amended by the ESSA, continues to focus on holding schools accountable for the outcomes of specific subgroups of students. The statute specifically requires that accountability determinations be based on the performance of all students and each subgroup of students, and requires a State to disaggregate data for purposes of measuring progress toward its long-term goals performance on each indicator under proposed §§ 200.13 and 200.14. The need to ensure statistical reliability and protect student privacy qualifies these disaggregation requirements; thus, the statute requires States to set an n-size and prohibits accountability determinations or reporting by subgroup if the size of the subgroup is too small to yield statistically reliable results, or would reveal personally identifiable information about individual students. Because these are statutory requirements for State accountability systems under section 1111(c), we propose to reorganize the current regulations so that requirements related to a State's n-size are included within the regulatory sections pertaining to accountability, instead of State assessment systems, by removing and reserving current § 200.7 and replacing it with proposed § 200.17.

A State's n-size should be no larger than necessary to ensure the protection of privacy for individuals and to allow for statistically reliable results of the aggregate performance of the students who make up a subgroup. The n-size must also be small enough to ensure the maximum inclusion of each student subgroup in accountability decisions and school identification, including measuring student progress against the State's long-term goals and indicators and notifying schools with consistently underperforming subgroups of students for targeted support and improvement, consistent with the statutory requirements to disaggregate data for such purposes.

Setting an n-size that is statistically reliable has been a challenge for States. Previous approaches have, at times, prioritized setting a conservative n-size (*e.g.*, 100 students) in order to yield more reliable accountability decisions. However, the use of an n-size is intended to ensure that results are both reliable and valid. While, in general, the reliability of results increases as the sample size increases, the validity of the results can decrease as more student subgroups are excluded from the accountability system. In other words, in determining an n-size, a State must appropriately balance the goal of producing reliable results with the goal of holding schools accountable for the outcomes of each subgroup of students. For example, under the ESEA, as amended by the NCLB, 79 percent of students with disabilities were included in the accountability systems of States with an n-size of 30. However, only 32 percent of students with disabilities were included in the accountability systems of States with an n-size of 40.[6] Similarly, in a 2016 examination of the effect of using different subgroup sizes in California's CORE school districts,[7] the study found that when using an n-size of 100, only 37 percent of African American students' math scores are reported at the school-level. However, using an n-size of 20 increases the percentage of "visible" African American students to 88 percent. The impact for students with disabilities is even larger: when the n-size is 100, only 25 percent of students with disabilities are reported at the school-level; however, 92 percent of students with disabilities are reported when using an n-size of 20.

Other analyses have shown that an n-size of 60 can potentially exclude all students with disabilities from a State's accountability system.[8] Basic statistics (*i.e.*, the Central Limit Theorem) support the use of 30 as an n-size.[9] The Central Limit Theorem states that as long as one uses a reasonably large sample size (*e.g.*, sample size greater than or equal to 30), the mean will be normally distributed, even if the distribution of scores in the sample is not.[10] Finally, some researchers have suggested that an n-size of 25 is sufficient to yield reliable data on student performance.[11]

For these reasons, proposed § 200.17(a)(2) would allow states to establish a range of n-sizes, not to exceed 30, so that States may select an n-size that is both valid and reliable. The proposed regulations would also allow a State to set an n-size that exceeds 30 students if it demonstrates how the higher number promotes sound, reliable accountability decisions and the use of disaggregated data in making those decisions in its State plan, including data on the number and percentage of schools that would not be held accountable for the results of students in each subgroup under its proposed n-size.

Section 200.18 Annual Meaningful Differentiation of School Performance

Statute: Section 1111(c)(4)(C)(i) of the ESEA, as amended by the ESSA, requires that each State establish a system for meaningfully differentiating all public schools in the State each year. The system of annual meaningful differentiation must be based on all of the indicators in the State accountability system under section 1111(c)(4)(B) for all students and for each subgroup of students. Section 1111(c)(4)(C)(ii) requires that the system of annual meaningful differentiation afford substantial weight to each of the following indicators:

- Academic achievement;
- Graduation rates for high schools;
- A measure of student growth, if determined appropriate by the State, or another valid and reliable academic indicator that allows for meaningful differentiation in school performance for elementary and secondary schools that are not high schools; and
- Progress in achieving English language proficiency.

These indicators, combined, must also be afforded much greater weight than the indicator or indicators of school quality or student success.

Current Regulations: Various sections of the current title I regulations describe how a school's performance against its AMOs in reading/language arts and mathematics and other academic indicators, including graduation rates, determine whether a school makes, or fails to make, AYP in a given school year. These sections essentially restate the statutory language in the ESEA, as amended by the NCLB.

Proposed Regulations: Proposed § 200.18 would replace the current regulations with regulations implementing the ESEA statutory requirements, as amended by the ESSA, for States to establish systems of annual meaningful differentiation of all public schools.

Performance Levels and Summative Ratings

The proposed regulations would require each State's system of annual meaningful differentiation to—

- Include the performance of all students and each subgroup of students in a school on all of the indicators, consistent with proposed regulations for inclusion of subgroups in § 200.16, for disaggregation of data in § 200.17, and for inclusion of students that attend the same school for only part of the year in § 200.20(c);
- Include at least three distinct levels of performance for schools on each indicator that are clear and understandable to the public, and set those performance levels in a way that is consistent with the school's attainment of the State's long-term goals and measurements of interim progress in proposed § 200.13;
- Provide information on each school's level of performance on each indicator in the accountability system separately as part of the description of the State's accountability system under

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[6] Harr-Robins, J., Song, M., Hurlburt, S., Pruce, C., Danielson, L., & Garet, M. (2013). "The inclusion of students with disabilities in school accountability systems: An update (NCEE 2013–4017)." Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, pp. 24–26.

[7] Hough, H., & Witte, J. (2016). "Making students visible: Comparing different student subgroup sizes for accountability." CORE–PACE Research Partnership, Policy Memo, 16–2.

[8] Simpson, M.A., Gong, B., & Marion, S. (2006). "Effect of minimum cell sizes and confidence interval sizes for special education subgroups on school-level AYP determinations." Council of Chief State School Officers; Synthesis Report 61. National Center on Educational Outcomes, University of Minnesota.

[9] Urdan, T.C. (2010). *Statistics in Plain English*. New York: Routledge.

[10] Ibid.

[11] Linn, R.L., Baker, E. L., & Herman, J.L. (2002). "Minimum group size for measuring adequate yearly progress." The CRESST line. *http://www.cse.ucla.edu/products/newsletters/cresst_cl2002_4.pdf.*

section 1111(h)(1)(C)(i)(IV) that is included as part of LEA report cards consistent with proposed § 200.32;

- Result in a single rating from among at least three distinct rating categories for each school, based on a school's level of performance on each indicator, to describe a school's summative performance and include such a rating as part of the description of the State's system for annual meaningful differentiation on LEA report cards consistent with proposed §§ 200.31 and 200.32;
- Meet the requirements of proposed § 200.15 to annually measure the achievement of not less than 95 percent of all students and 95 percent of all students in each subgroup of students on the assessments under section 1111(b)(2)(B)(v)(I); and
- Inform the State's methodology to identify schools for comprehensive and targeted support and improvement described in proposed § 200.19.

Weighting of Indicators

To annually meaningfully differentiate among all public schools in the State, including determining the summative rating for each school, proposed § 200.18 would require States to use consistent weighting among the indicators for all schools within each grade span. In particular, proposed § 200.18 would require States to give substantial weight to each of the Academic Achievement, Academic Progress, Graduation Rate, and Progress in English Language Proficiency indicators, consistent with the statutory requirements in section 1111(c)(4)(C)(ii)(I). Proposed § 200.18 would also require States to give much greater weight to those indicators, in the aggregate, than to the indicator or indicators of school quality or student success, consistent with the statutory requirements in section 1111(c)(4)(C)(ii)(II).

Further, to show that its system of annual meaningful differentiation meets these requirements for providing substantial and much greater weight to certain indicators, under proposed § 200.18 each State would be required to:

- Demonstrate that school performance on the School Quality or Student Success indicator(s) may not be used to change the identity of schools that would otherwise be identified for comprehensive support and improvement, unless such schools are making significant progress for the all students group under proposed § 200.16(a)(1) on at least one of the indicators that is afforded substantial weight and can be measured for all students; and
- Demonstrate that school performance on the School Quality or Student Success indicator(s) may not be used to change the identity of schools that would otherwise be identified for targeted support and improvement, unless each consistently underperforming or low-performing subgroup is making significant progress on at least one of the indicators that is afforded substantial weight.

In other words, the four substantially weighted indicators, together, would not be deemed to have much greater weight in the system if performance on the other, not substantially weighted indicator could remove a school from identification. Thus, in order for the school to be removed from identification it must also be making progress for the relevant subgroup of students on an indicator that receives substantial weight.

Similarly, under proposed § 200.18 each State would be required to demonstrate, based on the performance of all students and each subgroup of students, that a school performing in the lowest performance level on any of the substantially weighted indicators does not receive the same summative rating as a school performing in the highest performance level on all of the indicators. In other words, an indicator would not be considered to have substantial weight, and the overall system would not be meaningfully differentiating among schools, if low performance on that indicator failed to result in a school being rated differently than a school performing at the highest level on every indicator.

Finally, proposed § 200.18 would clarify that a State would not be required to afford the same substantial weight to each of the indicators that are required to receive a substantial weight in the system of annual meaningful differentiation. Further, it would clarify that if a school did not meet the State's n-size for English learners, a State must exclude the Progress in English Language Proficiency indicator from annual meaningful differentiation for the school and afford all of the remaining indicators for such a school the same relative weight that is afforded to those indicators in schools that meet the State's n-size for the English learner subgroup. It would not necessarily, however, relieve a school from its reporting requirements for English learners under the law if a State selects an n-size that is lower for reporting purposes than for purposes of annual meaningful differentiation consistent with proposed § 200.17.

Reasons: Given the changes in the ESEA statutory requirements and the heightened role for States in establishing systems of annual meaningful differentiation, we propose to revise the current regulations to reflect the new requirements and clarify how annual meaningful differentiation is related to other parts of the accountability system, such as participation in assessments in proposed § 200.15 and the identification of schools for comprehensive and targeted support and improvement in proposed § 200.19.

Without successful annual meaningful differentiation of schools, low-performing schools may not be identified for needed resources and interventions, and States and LEAs may be unable to provide appropriate supports and recognition that are tailored to schools' and students' needs based on their performance. Additionally, parents and the public will lack access to transparent information about the quality of schools in their communities and how well schools are educating all students. Providing information for each of these purposes is particularly difficult, given that accountability systems must include multiple indicators, disaggregated by multiple subgroups. For these reasons, proposed § 200.18 would further clarify the statutory requirements to ensure that annual meaningful differentiation results in actionable, useful information for States, LEAs, educators, parents, and the public.

Performance Levels and Summative Ratings

First, proposed § 200.18(b) would require States to establish at least three distinct performance levels for schools on each indicator and ensure that LEAs include how each school fared against these performance levels, separately by indicator, as part of the description of the accountability system on annual LEA report cards. To ensure that differentiation of schools is meaningful, the accountability system should allow for more than two possible outcomes for each school, and a requirement for at least three performance levels on each indicator would enable the system to recognize both high-performing and low-performing schools that are outliers, and distinguish them from more typical school performance.

Second, proposed § 200.18(b) would require each State to set performance levels on each indicator in a way that is consistent with attainment of the State's long-term goals and measurements of interim progress. If a school is repeatedly failing to make sufficient progress toward the State's goals for academic achievement, graduation rates, or English language proficiency, that would be reflected in the performance level the school receives on those indicators. This would help ensure that the system of annual meaningful differentiation and the State's long-term goals work together to provide a coherent picture of school performance to parents and the public, and that schools receive a consistent signal regarding the student progress and outcomes they are expected to achieve each year.

In addition, proposed § 200.18(b) would require the performance levels to be clear and understandable to parents and the public. For example, creating three levels of performance that are all synonyms for "meeting expectations" would likely be unhelpful, confusing, and fail to differentiate between schools in a meaningful way. Instead, the levels should indicate distinct differences in performance in user-friendly terms that the local community, especially students' parents, can understand.

These performance levels would need to be reported separately for each indicator under proposed § 200.14, because each measures a distinct aspect of school quality and performance, as well as reported together in a single summative rating, from among at least three overall school rating categories. Many schools may excel on some indicators, and struggle on other indicators—information that could be hidden if only an aggregate rating were reported, or if performance levels were reported on some, but not all, of the indicators. This also serves as an important safeguard to ensure that the Academic Achievement, Academic Progress, Graduation Rates, and Progress in Achieving English Language Proficiency indicators—the substantially weighted indicators in the system—are not overshadowed in a summative rating by School Quality or Student Success indicators that States may add. Further, by presenting the performance level on each indicator separately, States and districts would be better equipped to customize supports, technical assistance, and resources to meet the needs of each school.

However, there is significant value in providing a summative rating for each school that considers the school's level of performance across all of the indicators, and many States have already chosen to aggregate multiple measures into a single rating (*e.g.*, A–F school grades, performance indices, accreditation systems) for State or Federal accountability purposes. A single summative rating is easy for stakeholders, parents, and the public to understand, summarizes complicated information into a more digestible format, and provides clear comparisons among schools, just as grade point averages provide a quick, high-level snapshot of students' average academic performance, while students' grades in each subject provide more detailed information about particular strengths and weaknesses. Further, a summative rating sends a strong signal to educators and school leaders to focus on improving school performance across all indicators in the system, as each will contribute to the summative result. Research has shown that accountability systems have a stronger impact on increasing student achievement, particularly in mathematics, when summative ratings are linked to accountability determinations and potential rewards and interventions for schools than when systems rely on reporting information without school-level consequences based on that information.[12] For these reasons, proposed § 200.18 would require States to provide schools with summative ratings, across all indicators, and to report those ratings for each school on LEA report cards, as described in proposed §§ 200.31 and 200.32.

Weighting of Indicators

Proposed § 200.18(c) and (d) would clarify the requirements for four indicators—Academic Achievement, Academic Progress, Graduation Rates, and Progress in Achieving English Language Proficiency, as described in proposed § 200.14—to be afforded substantial weight separately, and much greater weight together, than the State's indicator or indicators of School Quality or Student Success in the summative rating by specifying three checks that States must meet to demonstrate that their systems comply with this requirement. Taken together, these checks would help ensure that the indicators that are required in the statute to receive much greater weight, in the aggregate, ultimately drive annual determinations of school quality and identification of schools for support and improvement. Similarly, they would help ensure that each substantially weighted indicator is not overshadowed by indicators that are not afforded that distinction by the statute. In addition to clarifying the statute, the checks required in proposed § 200.18(d) would provide critical parameters to help ensure that State accountability systems will emphasize student academic outcomes, like academic achievement, graduation rates, and English language proficiency, and will help close achievement gaps, consistent with the purpose of title I of the ESEA.

Proposed § 200.18(c) and (e) would clarify that in meeting the requirement to use consistent weighting across all schools within a grade span and for particular indicators to be afforded substantial weight, each indicator does not have to receive the same substantial weight. This would allow States to prioritize among the substantially weighted indicators, based on their unique goals and challenges, and customize their systems of annual meaningful differentiation to emphasize certain indicators more heavily within a particular grade span.

Further, proposed § 200.18(e) would clarify how a State must meet the requirements that they afford indicators substantial weight when a school does not enroll sufficient numbers of English learners to include the Progress in Achieving English Language Proficiency indicator. By requiring the same relative weighting among the remaining indicators in such a school as the weighting used in schools that meet the State's n-size for the English learner subgroup, the proposed regulation would help promote fair, comparable differentiation among all public schools, regardless of variation in the demographics of a school's student population. If the Academic Achievement indicator typically receives twice the weight of School Quality or Student Success indicators, as determined by the State, in schools that meet the State's n-size for English learners, the Academic Achievement indicator would continue to receive twice the weight of the School Quality or Student Success indicators in schools that do not meet the State's n-size for English learners. In this way, the proposed regulations would ensure that the weight that would have otherwise been given to the Progress in Achieving English Language Proficiency indicator is distributed among the other indicators in an unbiased and consistent way, so that the overall accountability system does not place relatively more, or less, emphasis on a particular indicator in schools without sufficient numbers of English learners.

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[12] See, for example, Dee, Thomas S., & Jacob, B. (May 2011). "The impact of No Child Left Behind on student achievement." Journal of Policy Analysis and Management, 30(3), 418–446; Carnoy, Martin, & Loeb, S. (2002). "Does external accountability affect student outcomes? A cross-state analysis." Educational Evaluation and Policy Analysis, 24(4), 305–31; and Ahn, T., & Vigdor, J. L. (September 2014). "The impact of No Child Left Behind's accountability sanctions on school performance: Regression discontinuity evidence from North Carolina." NBER Working Paper No. w20511.

Overall, proposed § 200.18 would provide clarity to States, support consistency in how terms are defined, and help ensure that key indicators, especially those most directly related to student learning outcomes, receive the emphasis required by the statute in the accountability system. The terms "substantial" and "much greater" are ambiguous, especially when States could employ various approaches in order to differentiate schools. The proposed regulations would give consistent meaning to these terms and help protect subgroups of students whose performance could be overlooked, and whose schools could go unidentified, if certain indicators were afforded insufficient weight. For example, if Progress in Achieving English Language Proficiency received less than "substantial" weight in a State's system of annual meaningful differentiation, it is possible that schools failing to support their English learners in attaining English language proficiency would go unidentified for targeted support and improvement, and students in those schools would not receive the supports, resources, and services they would have otherwise been eligible for as a school identified for improvement.

Section 200.19 Identification of Schools

Statute: Section 1111(c)(4)(D) of the ESEA, as amended by the ESSA, requires each State to create a methodology, based on the system of annual meaningful differentiation described in section 1111(c)(4)(C), for identifying certain public schools for comprehensive support and improvement. This methodology must identify schools beginning with the 2017–2018 school year, and at least once every three years thereafter, and must include three types of schools, specified in section 1111(c)(4)(D)(i)—

- The lowest-performing five percent of all title I schools in the State;
- Any public high school in the State failing to graduate one-third or more of its students; and
- Title I schools with a consistently underperforming subgroup that, on its own, is performing as poorly as all students in the lowest-performing five percent of title I schools and that has failed to improve after implementation of a targeted support and improvement plan.

Section 1111(c)(4)(C)(iii) and section 1111(d)(2)(A)(i) also require a State to use its method for annual meaningful differentiation, based on all indicators in the accountability system, to identify any public school in which one or more subgroups of students is consistently underperforming, as determined by the State, and to notify each LEA in the State of any public school served by the LEA of such identification so that the LEA can ensure the school develops a targeted support and improvement plan. The notification must also specify, beginning with the 2017–2018 school year as described in section 1111(d)(2)(D), if a subgroup of students in the school, on its own, has performed as poorly as all students in the bottom five percent of title I schools that have been identified for comprehensive support and improvement. This type of targeted support and improvement schools must implement additional targeted supports, as described in section 1111(d)(2)(C).

Section 1111(c)(4)(D)(ii) specifies that a State may also add other statewide categories of schools in addition to the categories of schools described above.

Current Regulations: Section 200.32 of the current title I regulations requires all LEAs to identify any title I school for improvement that fails to make AYP for two or more consecutive years. Generally, under the regulations, title I schools must be identified by the beginning of the school year following the school year in which the LEA administered the assessments that resulted in the school's failure to make AYP.

Proposed Regulations: Proposed § 200.19 would replace the current regulations with regulations reflecting the new statutory requirements under the ESEA, as amended by the ESSA, to identify schools for comprehensive support and improvement and for targeted support and improvement.

Comprehensive Support and Improvement, Generally

With regard to identification for comprehensive support and improvement, the proposed regulations would require each State to establish a methodology, based on its system of annual meaningful differentiation under proposed § 200.18, to identify a statewide category of schools for comprehensive support and improvement, which must include three types of schools: The lowest-performing schools, high schools with low graduation rates, and schools with chronically low-performing subgroups.

Lowest-Performing Five Percent of Title I Schools

The proposed regulations would require that each State identify the lowest-performing schools to include at least five percent of title I elementary, middle, and high schools in the State, taking into account—

- A school's summative rating among all students on the State's accountability indicators, averaged over no more than three years consistent with proposed § 200.20(a), which describes data procedures for annual meaningful differentiation and identification of schools; and
- The statutory requirement to assign substantial weight individually, and much greater weight overall, to the indicators of Academic Achievement, Academic Progress, Graduation Rates, and Progress in Achieving English Language Proficiency.

Low Graduation Rate High Schools

Proposed § 200.19 would require low graduation rate high schools to include any high school in the State with a four-year adjusted cohort graduation rate among all students below 67 percent, or below a higher percentage selected by the State, averaged over no more than three years consistent with proposed § 200.20(a).

Schools With Chronically Low-Performing Subgroups

Proposed § 200.19 would also require States to identify schools with chronically low-performing subgroups of students, which are defined as any title I school with one or more subgroups that performs as poorly as all students in any of the lowest-performing five percent of title I schools under proposed § 200.19(a)(1) and that have not sufficiently improved, as defined by the State, after implementation of a targeted support and improvement plan over no more than three years.

Identification for Targeted Support and Improvement

With regard to identification of schools for targeted support and improvement, the proposed regulations would establish requirements for identifying two types of schools. First, a State would be required to identify under proposed § 200.19(b)(2) each school with at least one low-performing subgroup of students, which is defined as a subgroup of students that is performing at a level at or below the summative performance of all students in any of the lowest-performing five percent of title I schools in comprehensive support and improvement. Second, each State would establish a methodology, based on its system of annual meaningful differentiation under proposed § 200.18, to identify schools with consistently underperforming subgroups for targeted support and improvement under proposed § 200.19(b)(1). Proposed § 200.19(c) would require that the State's methodology—

- Include any school with at least one consistently underperforming subgroup of students; and
- Take into account (1) a school's performance on the accountability indicators, over no more than two years, and (2) the statutory requirement to assign substantial weight individually, and much greater weight overall, to the indicators of Academic Achievement, Academic Progress, Graduation Rates, and Progress in Achieving English Language Proficiency. This methodology could also, at the State's discretion, include schools with low participation rates consistent with proposed § 200.15(b)(2)(iii).

In addition, proposed § 200.19(c) would require each State to identify subgroups of students that are consistently underperforming using a uniform definition across all LEAs, which may include:

- A subgroup of students that is not on track to meet the State's long-term goals or is not meeting the State's measurements of interim progress under proposed § 200.13;
- A subgroup of students that is performing at the lowest performance level in the system of annual meaningful differentiation on at least one indicator, or is particularly low performing on measures within an indicator (*e.g.*, performance on the State mathematics assessments);
- A subgroup of students that is performing at or below a State-determined threshold compared to the average performance among all students, or the highest-performing subgroup, in the State;
- A subgroup of students that is performing significantly below the average performance among all students, or the highest-performing subgroup, in the State, such that the performance gap is among the largest in the State; or
- Another definition, determined by the State, which the State demonstrates in its State plan would meet all proposed requirements for identification of schools for targeted support and improvement.

Frequency and Timeline for Identification

Proposed § 200.19 would also establish the timeline for identification of schools for comprehensive and targeted support and improvement, as follows:

- The lowest-performing title I schools, low graduation rate high schools, and title I schools with chronically low-performing subgroups would be identified for comprehensive support and improvement at least once every three years, beginning with the 2017–2018 school year, except that schools with chronically low-performing subgroups of students would not be required to be identified the first time a State identifies its lowest-performing and low graduation rate high schools in the 2017–2018 school year.
- Schools with consistently underperforming subgroups of students would be identified for targeted support and improvement annually, beginning with the 2018–2019 school year.
- Schools with low-performing subgroups of students that are performing at a level at or below the summative performance of all students in any of the lowest-performing five percent of title I schools would be identified at least once every three years, with identification occurring in each year that the State identifies the lowest-performing five percent of title I schools for comprehensive support and improvement, beginning with the 2017–2018 school year.

Finally, proposed § 200.19 would require that each State identify schools for comprehensive and targeted support and improvement by the beginning of the school year for which such school is identified. Specifically, the year of identification would be defined as the school year immediately following the year in which the State most recently measured the school's performance on the indicators under proposed § 200.14 that resulted in the school's identification. In other words, schools identified for the 2017–2018 school year would be identified, at a minimum, on the basis of their performance in the 2016–2017 school year and schools identified for the 2018–2019 school year would be identified, at a minimum, on the basis of their performance in the 2017–2018 school year, consistent with proposed § 200.20(a) regarding uniform procedures for averaging data.[13]

Reasons: Proposed § 200.19 replaces obsolete provisions of current regulations with new regulations incorporating the requirements under the ESEA, as amended by the ESSA, for the identification of low-performing schools.

Appropriate, accurate, and timely identification of low-performing schools is critical to ensuring that State accountability systems work and help improve student academic achievement and school success, as intended in the statute. LEAs are eligible to receive additional funding from their States, as described in proposed § 200.24, to support these schools. If low-performing schools are misidentified and excluded from comprehensive or targeted support and improvement, students who are struggling may not receive the additional resources and support they need. In addition, research has demonstrated that accountability systems with meaningful consequences for poor school performance are more effective at improving student outcomes than systems that rely primarily on reporting of school-level data to encourage improvement.[14] For these reasons, and given the extent of the statutory changes, we propose to update the current regulations to reflect the new requirements and support State implementation.

The proposed regulations would also clarify statutory school improvement provisions through additional requirements that align identification for school improvement with other accountability requirements, help ensure appropriate and timely identification of schools with low-performing students and subgroups of students, and create a cohesive system of school accountability and improvement, with distinct reasons for school identification and clear timelines for identification.

Comprehensive Support and Improvement, Generally

Proposed § 200.19 would clarify that identification of title I schools in the lowest-performing five percent of title I schools in the State and identification of high schools with low graduation rates is based on the performance of all students in the school. This clarification would help distinguish these schools, which proposed § 200.19 refers to as the lowest-performing schools and low graduation rate high schools, from schools identified due to consistently underperforming subgroups of students or low-performing subgroups. Further, because schools identified due to chronically low-performing subgroups of students are identified by directly comparing subgroup performance in a particular school to the performance of students within schools in the lowest-performing five percent of schools, the lowest-performing schools must be identified on the basis of all students' performance for this comparison to be meaningful.

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[13] Recognizing that identification of schools in 2017–2018 may be delayed in some States due to the Department's review and approval process for State plans under section 1111 of the ESEA, as amended by the ESSA, the Department plans to issue non-regulatory guidance to allow delayed identification of schools in the 2017–2018 school year in States whose plans have not yet been approved by the beginning of the 2017–2018 school year consistent with the State plan submission timeline in proposed § 299.13. Because proposed §§ 200.21 and 200.22 would allow identified schools to have a planning year, States and LEAs could allow schools that were identified for comprehensive or targeted support and improvement partway through the 2017–2018 school year to engage in planning and pre-implementation activities for the remainder of the 2017–2018 school year, so that all schools are fully implementing their support and improvement plans, as required by the ESEA, as amended by the ESSA, on the first day of the 2018–2019 school year.

[14] See, for example, Dee, Thomas S., & Jacob, B. (May 2011). "The impact of No Child Left Behind on student achievement." Journal of Policy Analysis and Management, 30(3), 418–446; and Hanushek, Eric A., & Raymond, M.E. (2005). "Does school accountability lead to improved student performance?" Journal of Policy Analysis and Management, 24(2), 297–327.

Similarly, proposed § 200.19 would clarify that identification of each type of school in comprehensive support and improvement must be based on a school's performance over no more than three years, consistent with the statutory requirement to identify these schools once every three years and with proposed regulations regarding averaging data across years under proposed § 200.20(a). If data were considered over a longer period of time, it may not reflect the school's current learning conditions, potentially leading to inappropriate identification of schools that have improved dramatically, or non-identification of schools that have experienced significant declines, since the last time the State identified these schools. Limiting the window over which performance may be considered at three years would help ensure identification is timely and accurate, and that improvement plans are developed for schools most in need of support.

Lowest-Performing Five Percent of Title I Schools

The proposed regulations would help ensure annual meaningful differentiation and school identification work together, creating a coherent accountability system that parents, the public, and other stakeholders can understand and that provides consistent information to schools regarding the progress and outcomes they are expected to achieve. For these reasons, proposed § 200.19 would ensure the lowest-performing schools are identified school summative ratings. For similar reasons, proposed § 200.19 would clarify that identification of the lowest-performing schools would be consistent with the statutory requirement that the Academic Achievement, Academic Progress, Graduation Rate, and Progress in Achieving English Language Proficiency indicators be given substantial weight individually, and much greater weight together, than indicator(s) of School Quality or Student Success.

Low Graduation Rate High Schools

Proposed § 200.19 would specify that any high school with a four-year adjusted cohort graduation rate below 67 percent, averaged over no more than three years, must be identified due to low graduation rates, consistent with the statutory requirements in section 1111(c)(4)(d)(i)(II). However, the proposed regulations also would permit a State to set a threshold that is higher than 67 percent for identifying low graduation rate high schools, in recognition of the wide range of average graduation rates across different States.[15]

Although the statute permits the use of an extended-year adjusted cohort graduation rate within the Graduation Rate indicator, the four-year adjusted cohort graduation rate is the only measure within the Graduation Rate indicator required for all schools. Relying exclusively on the four-year adjusted cohort graduation rate for identification would provide a consistent benchmark for holding schools accountable across States and LEAs, and signal the importance of on-time high school graduation as a key determinant of school and student success. If extended-year rates were considered in the identification of such high schools, the performance of students failing to graduate on-time could compensate for low on-time graduation rates, as calculated by the four-year adjusted cohort graduation rate, and prevent identification of high schools with low on-time graduation rates.

Identification for Targeted Support and Improvement

Proposed § 200.19 would also support States in accurately identifying schools for targeted support and improvement by aligning the methodology for identifying these schools with other components of the State accountability system. Specifically, proposed § 200.19(b) would clarify the two types of schools identified for targeted support and improvement: Schools with low-performing subgroups of students and schools with consistently underperforming subgroups of students. First, a State would be required under proposed § 200.19(b)(2) to identify schools with one or more subgroups of students performing, as an individual subgroup, as poorly as all students in any school in the lowest-performing five percent of title I schools based on the State's summative ratings. These schools would be referred to as schools with low-performing subgroups in proposed § 200.19 and would receive additional targeted support under proposed § 200.22. The proposed regulations are needed to clarify how identification of these schools enables the State to meet the statutory requirement to identify, at least once every three years, any school with low-performing subgroups of students for comprehensive support and improvement if such a school receives title I funds and does not meet the State's exit criteria after implementing a targeted support and improvement plan (described further in proposed § 200.22).

Second, proposed § 200.19(c) would require States, in identifying schools with consistently underperforming subgroups of students for targeted support and improvement, to consider a school's level of performance on the indicators described in proposed § 200.14. Further, a State's methodology for identifying such schools would need to be consistent with the statutory requirement for the Academic Achievement, Academic Progress, Graduation Rate, and Progress in Achieving English Language Proficiency indicators to be given substantial weight individually, and much greater weight, in the aggregate, than indicator(s) of School Quality or Student Success. This clarification would help ensure a State's system of annual meaningful differentiation and system of identification are coherent to parents and the public, and send a consistent signal to educators and schools regarding what level of student progress and achievement is considered sufficient.

Proposed § 200.19(c) would further clarify the methodology States would use to identify schools with consistently underperforming subgroups of students by specifying that identification of these schools must be based on school performance in the system of annual meaningful differentiation over no more than two years. If data were considered over a longer period of time, it may not reflect the most current level of subgroup performance in the school, leading to inappropriate identification. Further, by ensuring identification following no more than two years of low subgroup performance, schools can receive the supports needed to help the subgroup improve prior to that particular cohort of students exiting the school. Early identification of schools for targeted support and improvement also may result in increased achievement in such schools, which would help avoid subsequent identification for comprehensive support and improvement and avoid strain on State and local improvement capacity.

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[15] EDFacts Data Groups 695 and 696, School year 2013–14; September 4, 2015. *http://nces.ed.gov/ccd/tables/ACGR_RE_and_characteristics_2013-14.asp.*

Proposed § 200.19(c) would also provide parameters around how a State must define "consistently underperforming," with multiple suggested approaches. The accountability systems established in the ESSA require disaggregated information by subgroup in each of its components: long-term goals and measurements of interim progress, indicators, assessment participation rates, and annual meaningful differentiation. In this way, the statute signals the importance of including subgroups of students to the maximum extent possible. However, identification of schools specifically based on subgroup performance, and subsequent interventions to support improved outcomes for all students in the school, depends on a robust definition of "consistently underperforming." For these reasons, proposed § 200.19(c) would suggest ways for States to define "consistently underperforming" to help ensure that each State system of identification meaningfully considers performance for subgroups of students. Given that there likely are numerous ways to establish a methodology for identifying consistently underperforming subgroups, we are especially interested in receiving public comment on whether the suggested methods in § 200.19 would result in meaningful differentiation and identification of schools; which additional options should be considered, if any; and which options, if any, in proposed § 200.19 should not be included or should be modified because they do not adequately identify underperforming subgroups of students.

Frequency and Timeline for Identification

Finally, proposed § 200.19 would clarify the timeline for identification of schools under the ESEA, as amended by the ESSA. The statute is clear that identification begins with the 2017–2018 school year and that a State must identify schools for comprehensive support and improvement at least once every three years, but does not indicate at which point during the year such identification must occur. Because a clear, regular timeline for identification of schools is critical to meet the needs of students, allow sufficient time for planning meaningful interventions, and permit full and effective implementation of support and improvement plans, proposed § 200.19 would require identification of all schools by the beginning of each school year for which the school is identified and would clarify that the year for which the school is identified (*e.g.*, the 2017–2018 school year) means the school year immediately following the year in which the State most recently measured the school's performance on the indicators under proposed § 200.14 that resulted in the school's identification (*e.g.*, the 2016–2017 school year).

Further, proposed § 200.19 clarifies when State accountability systems under the ESEA, as amended by the ESSA, take effect, with the lowest-performing schools, high schools with low graduation rates, and schools with chronically low-performing subgroups in comprehensive support and improvement and schools with low-performing subgroups in targeted support and improvement identified at least once every three years starting in 2017–2018, and with schools that have consistently underperforming subgroups of students identified annually starting in 2018–2019. However, because identification of a school with chronically low-performing subgroups only occurs after such a school has implemented a targeted support and improvement plan and failed to meet the State's exit criteria under proposed § 200.22, a State could not identify such schools in 2017–2018. Accordingly, proposed § 200.19 requires identification of schools with chronically low-performing subgroups for comprehensive support and improvement the second time a State identifies its lowest performing schools for comprehensive support and improvement, no later than the 2020–2021 school year, as title I schools with low-performing subgroups would have had an opportunity to implement a targeted support and improvement plan and demonstrate that they met the exit criteria at that time.

Section 200.20 Data Procedures for Annual Meaningful Differentiation and Identification of Schools

Statute: Section 1111(c)(4)(B) and (C) of the ESEA, as amended by the ESSA, requires States to annually measure indicators and meaningfully differentiate among all public schools in the State, including by using disaggregated data on each subgroup in a school that meets the minimum subgroup size set by the State under section 1111(c)(3). Section 1111(c)(4)(D) requires States to identify low-performing schools for comprehensive support at least once every three years and to annually identify schools with consistently underperforming subgroups. The statute does not specify how data averaging procedures may be applied for purposes of measuring school performance on each indicator, or for reporting purposes, and how that interacts with the State's minimum subgroup size.

Section 1111(c)(4)(F) contains requirements for including students that do not attend the same school in an LEA for the entire school year in State accountability systems. The statute indicates that the performance of any student enrolled for at least half of the school year must be included on each indicator in the accountability system; students enrolled for less than half of the school year in the same school may be excluded. For graduation rates, if a high school student enrolled for less than half of the school year drops out and does not transfer to another high school, such student must be included in the denominator for calculating the four-year adjusted cohort graduation rate and assigned either to the school the student most recently attended, or to the school where the student was enrolled for the greatest proportion of school days during grades 9 through 12.

Current Regulations: Section 200.20 describes how schools make AYP and clarifies that, for the purposes of determining AYP, a State is permitted to establish a uniform procedure for averaging data, which may include averaging data across school years and combining data across grades, within subject area and subgroup, in a school or LEA. Additionally, if a State averages data across school years, the State may average data from the school year for which the AYP determination is made with data from the immediately preceding one or two school years. Consistent with §§ 200.13 through 200.20, a State that averages data across school years must continue to meet annual assessment and reporting requirements, make annual AYP determinations for all schools and LEAs, and implement school improvement requirements.

Section 200.20(e) requires a State to include all students that have been enrolled in schools in an LEA for a full academic year in determining AYP for each LEA, but students that are not enrolled in the same school for the full academic year may be excluded from AYP determinations for the school. The current title I regulations do not define "full academic year."

Proposed Regulations: Proposed § 200.20 would replace current title I regulations with regulations that would update and clarify how data averaging may be used in the statewide accountability system for annual meaningful differentiation and identification of schools under proposed §§ 200.18 and 200.19. The proposed regulations would retain the requirements of current § 200.20, while updating references to reflect new statutory requirements under the ESEA, as amended by the ESSA. The requirements retained from the current regulations would also be reordered for clarity.

Proposed § 200.20(a)(1)(ii)(A)–(B) would clarify that, if a State averages data across years, the State must continue to report data for a single year, without averaging, on State and LEA report cards under section 1111(h). Further, under proposed § 200.20(a)(1)(ii)(C), a State that averages data across years would be required to explain its uniform procedure for averaging data in its State plan and specify the use of such procedure in its description of the indicators used for annual meaningful differentiation in its accountability system on the State report card under section 1111(h)(1)(C)(i)(III).

Proposed § 200.20(a)(2) would retain requirements from the current regulations on combining data across grades and further clarify that a State choosing to combine data across grades must, consistent with the requirements for averaging data across years, use the same uniform procedure for all public schools; report data for each grade in the school on State and LEA report cards under section 1111(h); and, consistent with proposed § 200.20(a)(1)(ii)(C), explain its uniform procedure in its State plan and specify the use of such procedure on its State report card.

Proposed § 200.20(b) would restate, and restructure, the requirements on partial enrollment from section 1111(c)(4)(F). Section 200.20(b)(2)(ii) would clarify that the approach used by an LEA for assigning high school students who exit without a diploma and who do not transfer to another high school must be consistent with the approach established by the State for calculating the denominator of the four-year adjusted cohort graduation rate under proposed § 200.34(f). Additionally, proposed § 200.20(b)(2)(iii) would clarify that all students, regardless of their length of enrollment in a school within an LEA during the academic year, must be included for purposes of reporting on the State and LEA report cards under section 1111(h) for such school year.

Reasons: Proposed § 200.20 would retain from the current regulations the flexibility for States to average data across years or combine data across grades, because the reliability of data used to make accountability determinations continues to be important for supporting systems that fairly measure the performance of all students and, to the greatest extent practicable, all subgroups of students in a school. Averaging data across school years, or across grades, in a school can increase the data available to consider as part of accountability determinations, improving reliability of accountability determinations and increasing the likelihood that a particular subgroup in a school will meet the State's minimum n-size. We propose to reorder the requirements in proposed § 200.20 to make the regulations easier to understand and to facilitate compliance.

Proposed § 200.20(a)(1)(ii) would also require that a State explain its uniform procedure for averaging data in its State plan and specify the use of such procedure on its annual State report card in order to increase transparency. Such information is important to help stakeholders understand how accountability determinations are made.

To be consistent with the proposed requirements for averaging data across years and create a coherent system, proposed § 200.20(a)(2) would clarify that States choosing to combine data across grades must report data individually for each grade in a school, use the same uniform procedure for combining data across grades in all schools, and explain the procedure in the State plan and specify its use in the State report card.

Proposed § 200.20(b) would clarify that the inclusion of students for accountability must be based on time enrolled in a school, rather than attendance, which we believe is more consistent with the new statutory requirements under section 1111(c)(4)(F) of the ESEA, as amended by the ESSA, which are intended to ensure accountability systems and reporting are maximally inclusive of all students and each subgroup of students, while promoting fairness in school accountability determinations by excluding students whose performance had little to do with a particular school because they were only enrolled for a short period of time. Furthermore, basing the inclusion of students on attendance could create a perverse incentive to discourage students who are low-performing from attending schools—contrary to the purpose of title I to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.

Section 200.21 Comprehensive Support and Improvement

Statute: Section 1111(d) of the ESEA, as amended by the ESSA, requires a State to notify each LEA of any school served by the LEA that is identified for comprehensive support and improvement. Upon receiving such information from the State, section 1111(d)(1)(B) requires the LEA, in partnership with stakeholders, to design and implement a comprehensive support and improvement plan that is informed by the State's long-term goals and indicators described in section 1111(c)(4); includes evidence-based interventions; is based on a school-level needs assessment; identifies resource inequities; is approved by the school, LEA, and SEA; and upon approval and implementation, is monitored and periodically reviewed by the SEA.

With respect to any high school identified for comprehensive support and improvement due to low graduation rates, as described in section 1111(c)(4)(D)(i)(II), the State may permit differentiated improvement activities under section 1111(d)(1)(C) that utilize evidence-based interventions for schools that predominately serve students returning to school after exiting without a regular diploma or who are significantly off track to accumulate sufficient academic credits to meet high school graduation requirements. Section 1111(d)(1)(C) also allows a State to exempt high schools with less than 100 students that are identified for comprehensive support and improvement due to low graduation rates from implementing the required improvement activities.

Section 1111(d)(1)(D) allows an LEA to provide all students enrolled in a school identified by the State for comprehensive support and improvement with the option to transfer to another public school served by the LEA, unless such an option is prohibited by State law.

Section 1111(d)(3)(A)(i)(I) also requires a State to establish statewide exit criteria for comprehensive support and improvement schools, which, if not satisfied within a State-determined number of years (not to exceed four years), must result in more rigorous State-determined action in the school, such as the implementation of interventions (which may address school-level operations).

Current Regulations: Sections 200.30 to 200.49 of the current title I regulations require States and LEAs to ensure escalating improvement measures over time for title I schools that do not make AYP for consecutive years and require LEAs to implement specific strategies for students attending schools identified for each phase of improvement, based on the number of years a school has failed to make AYP.

Proposed Regulations: Proposed § 200.21 would replace the current regulations with regulations that clarify the statutory requirements under the ESEA, as amended by the ESSA, for States to help ensure that LEAs with schools identified for comprehensive support and improvement develop and implement plans that will be effective in increasing student academic achievement and school success.

Notice

Proposed § 200.21 would require that each State notify any LEA that serves a school identified for comprehensive support and improvement no later than the beginning of the school year for which the school is identified. Proposed § 200.21 would also require that an LEA that receives such a notification from the State promptly notify the parents of each student enrolled in the identified school, including, at a minimum, the reason or reasons for the school's identification and an explanation for how parents can be involved in developing and implementing the school's improvement plan. This notice must—

- Be in an understandable and uniform format;
- Be, to the extent practicable, written in a language that parents can understand or, if it is not practicable to provide written translations to a parent with limited English proficiency, be orally translated for such parent; and
- Be, upon request by a parent or guardian who is an individual with a disability as defined by the Americans with Disabilities Act, 42 U.S.C. 12102, provided in an alternative format accessible to that parent.

Needs Assessment

Proposed § 200.21 would require that an LEA with a school identified for comprehensive support and improvement complete, in partnership with stakeholders (including principals and other school leaders, teachers, and parents), a needs assessment for the school that examines—

- Academic achievement information based on the performance, on the State assessments in reading/language arts and mathematics, of all students and each subgroup of students in the school;
- The school's performance, including among subgroups of students, on all indicators and on the State's long-term goals and measurements of interim progress described in proposed §§ 200.13 and 200.14;
- The reason or reasons the school was identified for comprehensive support and improvement; and
- At the LEA's discretion, the school's performance on additional, locally selected indicators that are not included in the State's system of annual meaningful differentiation that affect student outcomes in the school.

LEA Development of Comprehensive Support and Improvement Plan

The proposed regulations would require an LEA with a school identified for comprehensive support and improvement to develop and implement a comprehensive support and improvement plan to improve student outcomes in the school. Specifically, the proposed regulations would require that the comprehensive support and improvement plan—

- Be developed in partnership with stakeholders (including principals and other school leaders, teachers, and parents);
- Describe how early stakeholder input was solicited and taken into account in the plan's development, and how stakeholders will participate in the plan's implementation;
- Incorporate the results of the school-level needs assessment;
- Include one or more interventions (*e.g.,* increasing access to effective teachers or adopting incentives to recruit and retain effective teachers; increasing or redesigning instructional time; interventions based on data from early warning indicator systems; reorganizing the school to implement a new instructional model; strategies designed to increase diversity by attracting and retaining students from varying socioeconomic backgrounds; replacing school leadership; in the case of an elementary school, increasing access to high-quality preschool; converting the school to a public charter school; changing school governance, closing the school; or, in the case of a public charter school, revoking or non-renewing the school's charter by its authorized public chartering agency consistent with State charter school law) that: (1) Are evidence-based; (2) are supported, to the extent practicable, by the strongest level of evidence that is available and appropriate to meet the needs of the school, as identified by the needs assessment, and by research conducted on a sample population or setting that overlaps with the population or setting of the school to be served; and (3) may be selected from among State-established evidence-based interventions or a State-approved list of evidence-based interventions;
- Identify and address resource inequities by including, at a minimum, a review of LEA- and school-level resources among schools and, as applicable, within schools with respect to disproportionate rates of ineffective, out-of-field, or inexperienced teachers identified by the State and LEA under sections 1111(g)(1)(B) and 1112(b)(2) and per-pupil expenditures of Federal, State, and local funds reported annually under section 1111(h)(1)(C)(x), and, at the LEA's discretion, a review of LEA and school-level budgeting and resource allocation with respect to disproportionate rates of ineffective, out-of-field, or inexperienced teachers and per-pupil expenditures and any other resource, including access and availability of advanced coursework, preschool programs, and instructional materials and technology;
- Be made publicly available by the LEA, including to parents consistent with the notice requirements described above; and
- Be approved by the school, the LEA, and the State.

Additionally, an LEA may have a planning year for a school identified for comprehensive support and improvement, during which the LEA must carry out the needs assessment and develop the school's comprehensive support and improvement plan to prepare for the successful implementation of the school's interventions. Such a planning year is limited to the school year in which the school was identified.

State Responsibilities

Proposed § 200.21 would require that a State review and approve each comprehensive support and improvement plan in a timely manner, as determined by the State, and take all actions necessary to ensure that each school and LEA develops and implements a plan that meets all of the requirements of proposed § 200.21 within the required timeframe. Further, the proposed regulations would require that the State monitor and periodically review each LEA's implementation of its plan.

Exit Criteria

Proposed § 200.21 would also require that the State establish uniform statewide exit criteria for schools implementing comprehensive support and improvement plans to help ensure continued progress to improve student academic achievement. In establishing the exit criteria, the proposed regulations would require a State to ensure that a school meeting the exit criteria within a State-determined number of years, not to exceed four years, both increases student outcomes and no longer meets the criteria for comprehensive support and improvement under proposed § 200.19.

The proposed regulations would specify that, if a school does not meet the exit criteria, the State would require the LEA to conduct a new school-level needs assessment and, based on its results, amend its comprehensive support and improvement plan to—

- Address the reasons the school did not meet the exit criteria, including whether the school implemented the interventions with fidelity and sufficient intensity, and the results of the new needs assessment;
- Update how it will continue to address previously identified resource inequities and identify and address any new resource inequities consistent with the requirements to review those inequities in its original plan; and
- Implement additional interventions in the school that (1) must be determined by the State; (2) must be more rigorous and based on strong or moderate levels of evidence; (3) must be supported, to the extent practicable, by evidence from a sample population or setting that overlaps with the population or setting of the school to be served; and (4) may address school-level operations, such as changes to budgeting, staffing, or the school day and year.

The proposed regulations would require that the LEA submit the amended plan to the State in a timely manner, as determined by the State. Upon receipt of the LEA's amended plan, proposed § 200.21 would require that the State review and approve the plan in a timely manner, as determined by the State, and take all actions necessary to ensure that each school and LEA meets the requirements of proposed § 200.21 to develop and implement the amended plan within the required timeframe. The proposed regulations would also require that the LEA make the amended plan publicly available, including to parents, consistent with the manner in which they provided the required notice described above.

Finally, the proposed regulations would require that a State increase its monitoring, support, and periodic review of each LEA's implementation of an amended comprehensive support and improvement plan based on a school's failure to meet the exit criteria.

State Discretion for Certain High Schools

Proposed § 200.21 would incorporate the flexibility in section 1111(d)(1)(C) for States with respect to certain high schools identified for low graduation rates. First, the proposed regulations would permit differentiated school improvement activities, as long as those activities still meet the requirements for schools in comprehensive support and improvement described above, including in a high school that predominantly serves students who (1) have returned to education after having exited high school without a regular high school diploma and (2) based on their grade or age, are significantly off track to earn sufficient academic credits to meet the State's graduation requirements. Second, the proposed regulations would permit a State to allow an LEA to forgo implementation of a comprehensive support and improvement plan in a high school that was identified under proposed § 200.19 for low graduation rates, but has a total enrollment of less than 100 students.

Public School Choice

Proposed § 200.21 would clarify the option for students to transfer to a different public school included in section 1111(d)(1)(D) by precluding the option to transfer from a school identified for comprehensive support and improvement to another school identified for comprehensive support and improvement and specifying that, if such an option is inconsistent with a federal desegregation order, the LEA must petition and obtain court approval for such transfers.

Reasons: Proposed § 200.21 would provide clarity where the statute is ambiguous and reorganize the statutory requirements to facilitate a better understanding of, and compliance with, those requirements. Specifically, proposed § 200.21 would clarify the requirements regarding notice, development, approval, and implementation of comprehensive support and improvement plans, including a strengthened role for the State in supporting such implementation in schools that fail to meet the State's exit criteria over time.

Notice

Before a comprehensive support and improvement plan is implemented in an identified school, the statute requires the LEA to develop such a plan in partnership with stakeholders, including parents. In order to ensure that parents are meaningfully included in this process, proposed § 200.21 would require an LEA to provide notice to parents of the school's identification in order to ensure that the notice is not only understandable and clear about why a school was identified, but also enables parents to be engaged in development and implementation of the comprehensive support and improvement plan, as required by the statute. These requirements would provide greater transparency and help parents understand the need for, and the process for developing, a school's comprehensive support and improvement plan, including the needs assessment, so that they can be meaningful participants in school improvement activities and take an active role in supporting their child's education. Parents and guardians with disabilities or limited English proficiency have the right to request notification in accessible formats. We encourage States and LEAs to proactively make all information and notices they provide to parents and families accessible, helping to ensure that parents are not routinely requesting States and LEAs to make information available in alternative formats. For example, one way to ensure accessibility would be to provide orally interpreted and translated notifications and to follow the requirements of section 508 of the Rehabilitation Act.

Needs Assessment

To inform the development of a comprehensive support and improvement plan, an LEA with a school identified for comprehensive support and improvement must complete a needs assessment for the school. The proposed regulations would specify certain elements that must be part of the school-level needs assessment, ensuring that a needs assessment is conducted in partnership with stakeholders; is informed by relevant data, including student performance on the State academic assessments and other measures the LEA determines are relevant to their local context; and examines the reason the school was identified for comprehensive support and improvement. These elements would provide a sound basis for a comprehensive support and improvement plan, and would increase the likelihood that such a plan would be effective, by examining multiple dimensions of school performance and specifically analyzing the reason or reasons the school was identified.

LEA Development of Comprehensive Support and Improvement Plan

Proposed § 200.21 would also clarify requirements for the development of the comprehensive support and improvement plan. First, the regulations would require (1) meaningful, ongoing stakeholder input in the development and implementation of plans, and (2) that the plans, and any amendments to the plans, be made publicly available in a manner that will ensure parents can access them. A plan cannot be implemented in partnership with parents, teachers, and principals if the plan itself is not easily accessible.

Second, the proposed regulations would clarify that the evidence requirements for comprehensive support and improvement plans are based on the definition of "evidence-based" in section 8101(21) of the ESEA, as amended by the ESSA. Specifically, proposed § 200.21 would specify that one or more of a school's activities and interventions, as opposed to all activities and interventions, must be evidence-based, and would require an LEA to take into consideration, in selecting an evidence-based intervention, the strongest level of evidence that is available and appropriate and its relevance to the context in which the intervention will be implemented, if practicable. Schools implementing comprehensive support and improvement plans are more likely to see improvements if they employ particular strategies that are grounded in evidence. Because the evidence base for interventions in low-performing schools is relatively nascent and still growing, proposed § 200.21 would help support LEAs in making prudent, smart choices when selecting among evidence-based interventions by encouraging the use of interventions that are supported by the strongest level of evidence that is available and appropriate to meet the needs of the school, including, where possible, evidence suggesting that the intervention was effective for an overlapping population or in an overlapping setting to those of the identified school.

Third, proposed § 200.21 would specify minimum requirements for the LEA's efforts to review and address resource inequities, which may include LEA- and school-level budgeting. Specifically, at a minimum, the identification of resource inequities must include a review of disproportionate rates, among schools and, as applicable, within schools, of ineffective, out-of-field, or inexperienced teachers and per-pupil expenditures of Federal, State, and local funds—using data already required to be collected and reported under the ESEA, as amended by the ESSA. In addition, we propose clarifications that would emphasize the importance of equity and access in other areas (*e.g.*, access to advanced coursework or high-quality preschool programs). In total, these clarifications would encourage LEAs to correct deficits in resources that will be critical to developing and implementing a successful improvement plan for schools in need of comprehensive support.

Finally, the proposed regulations would clarify an LEA may have, with respect to each school identified for comprehensive support and improvement, a planning year limited to the school year in which the school was identified. This would allow time to prepare for the successful implementation of interventions specified in the plan by, for example, consulting with stakeholders, conducting a needs assessment, and identifying resource inequities and evidence-based interventions, and to ensure that such planning does not inordinately delay the full implementation of interventions that are needed to support improved student achievement and school success.

State Responsibilities

The proposed regulations would clarify the State's responsibilities regarding plan approval. Specifically, the State would be required to conduct a timely review of the LEA's plan and take necessary actions to ensure that each school and LEA is able to meet all of the requirements of proposed § 200.21 to develop and implement the plan within the required timeframe. These clarifications would ensure plans are approved expeditiously and meet key statutory requirements, and prevent significant delays at the LEA or school level in implementation of activities and interventions that will help improve student achievement and outcomes in identified schools.

Exit Criteria

Further, to ensure continued progress in student academic achievement and school success, proposed § 200.21 would require the State to establish uniform statewide exit criteria for any school implementing a comprehensive support and improvement plan, including that the school no longer meets the criteria for identification under proposed § 200.19(a) and demonstrates improved student outcomes. Requiring improved student outcomes would help ensure that schools do not exit improvement status before making meaningful gains in performance, consistent with the statutory requirement in section 1111(d)(3), that a State ensure schools identified for comprehensive support and improvement achieve continued progress to improve student academic achievement and school success.

Proposed § 200.21 also would clarify additional actions a school identified for comprehensive support and improvement must take if it does not meet the exit criteria. In particular, as noted above, schools implementing comprehensive support and improvement plans are more likely to see improvements if they employ strategies that are grounded in research. In addition, the proposed regulations would ensure the State has a larger role in supporting an LEA in the development and oversight of an amended comprehensive support and improvement plan after its initial plan was unsuccessful, which is necessary when an LEA's plan for improvement has been ineffective.

Section 200.22 Targeted Support and Improvement

Statute: Section 1111(d) of the ESEA, as amended by the ESSA, requires a State to notify each LEA of any school served by the LEA in which any subgroup of students is consistently underperforming, as described in section 1111(c)(4)(C)(iii), as well as ensure such an LEA provides notification to identified schools. Upon receiving notification from the LEA, the school, in partnership with stakeholders, must design a school-level targeted support and improvement plan to improve student outcomes based on the indicators in the statewide accountability system. The plan must be informed by all indicators described in section 1111(c)(4)(B), including student performance against the State's long-term goals described in section 1111(c)(4)(A); include evidence-based interventions; be approved by the LEA prior to implementation; be monitored, upon submission and during implementation, by the LEA; and result in additional action following unsuccessful implementation of the plan after a number of years determined by the LEA.

Section 1111(d) requires additional targeted support for schools with any subgroup of students performing at or below the level of students in the lowest-performing five percent of all title I schools identified for comprehensive support and improvement under section 1111(c)(4)(D)(i)(I). In addition to implementing targeted support and improvement plans as described in clauses (i) through (iv) in section 1111(d)(2)(B), schools identified for additional targeted support must also identify resource inequities, which may include a review of LEA- and school-level budgeting, to be addressed through plan implementation.

Section 1111(d) also requires a State to establish statewide exit criteria for schools requiring additional targeted support, as described in section 1111(d)(2)(C). If these exit criteria are not met within a State-determined number of years, the State must identify title I schools requiring additional targeted support as comprehensive support and improvement schools.

Current Regulations: Sections 200.30 through 200.49 of the current title I regulations require States and LEAs to ensure improvement measures escalate consequences over time for title I schools that do not make AYP for consecutive years. In addition, LEAs must implement specific strategies for students attending schools identified for each phase of improvement, based on the number of years a school has failed to make AYP.

Proposed Regulations: Proposed § 200.22 would replace the current regulations with regulations that clarify the statutory requirements in the ESEA, as amended by the ESSA, for States and LEAs to ensure that schools identified for targeted support and improvement will implement plans that are effective in increasing student academic achievement for the lowest-performing students in those schools.

Notice

Proposed § 200.22 would require a State to notify each LEA that serves one or more schools identified for targeted support and improvement of the identification, and would then require each LEA to notify each identified school, no later than the beginning of the school year for which the school is identified, including notice of the subgroup or subgroups that have been identified by the State as consistently underperforming or low-performing, or, at the State's discretion, the subgroup or subgroups that are identified under proposed § 200.15(b)(2)(iii) for low assessment participation rates.

Proposed § 200.22 would also require that an LEA that receives such a notification from the State promptly notify the parents of each student enrolled in the identified school so that parents may be meaningfully involved in improvement efforts. The parental notice would be required to be understandable and accessible in the same manner as the notice under proposed § 200.21(b)(1)–(3) and include at a minimum, the reason or reasons for identification and an explanation of how parents can be involved in developing and implementing the school's support and improvement plan, consistent with the statutory requirement that parents serve as partners in the development of such plans.

Development of Targeted Support and Improvement Plans

The proposed regulations would require a school identified for targeted support and improvement to develop and implement a plan that addresses the reason or reasons for identification and that will improve student outcomes for the lowest-performing students in the school. Specifically, the proposed regulations would require that the targeted support and improvement plan—

- Be developed in partnership with stakeholders (including principals and other school leaders, teachers, and parents);
- Describe, at a minimum, how early stakeholder input was solicited and taken into account in the plan's development, and how stakeholders will participate in the plan's implementation;
- Be designed to improve student performance for the lowest-performing students on each of the indicators in the statewide accountability system that led to the school's identification, or, in the case of a school identified under proposed § 200.15(b)(2)(iii) to improve assessment participation rates in the school;
- Take into consideration the school's performance on all indicators in the statewide accountability system and student performance against the State's long-term goals and measurements of interim progress, including student academic achievement on each of the assessments required under section 1111(b)(2)(B)(v), and, at the school's discretion, locally selected indicators that are not included in the State's system of annual meaningful differentiation that affect student outcomes in the school;
- For any school operating a schoolwide program under section 1114 of the ESEA, as amended by the ESSA, address the needs identified by the needs assessment required under section 1114(b)(6);
- Include one or more interventions that (1) must be evidence-based; (2) must be appropriate to address the reason or reasons for identification and to improve student outcomes for the lowest-performing students in the school, consistent with the requirement in section 1111(d)(2)(B) of the ESEA, as amended by the ESSA; (3) must be, to the extent practicable, supported by research conducted on a sample population or setting that overlaps with the population or setting of the school to be served; and (4) may be selected from a State-approved list of evidence-based interventions;
- Be submitted by the school to the LEA for review and approval; and
- For a school with low-performing subgroups as described under proposed regulations in § 200.19(b)(2), identify and address resource inequities that affect the low-performing subgroup by including, at a minimum, a review of LEA- and school-level resources among schools and, as applicable, within schools with respect to disproportionate rates of ineffective, out-of-field, or inexperienced teachers identified by the State and LEA under sections 1111(g)(1)(B) and 1112(b)(2) and per-pupil expenditures of Federal, State, and local funds reported annually under section 1111(h)(1)(C)(x), and, at the LEA's discretion, a review of LEA- and school-level budgeting and resource allocation with respect to disproportionate rates of ineffective, out-of-field, or inexperienced teachers and per-pupil expenditures and any other resource, including access and availability of advanced coursework, preschool programs, and instructional materials and technology.

Additionally, a school identified for targeted support and improvement due to consistently underperforming or low-performing subgroups of students may have a planning year during which the school must carry out stakeholder engagement, selection of interventions, and other activities necessary to prepare for successful implementation of the plan. The planning year is limited to the school year in which the school was identified.

LEA Responsibilities

The proposed regulations would also require that an LEA review and approve each targeted support and improvement plan in a timely manner and take all actions necessary to ensure that each school is able to meet all of the requirements of proposed § 200.22 to develop and implement the plan within the required timeframe. Further, the proposed regulations would require that the LEA monitor each school's implementation of its plan. Finally, the proposed regulations would require that the LEA make each targeted support and improvement plan, and any amendments to the plan, publicly available, including to parents consistent with the manner in which the LEA is required to provide notice as described above.

Exit Criteria

The proposed regulations would require that the LEA establish uniform exit criteria for schools implementing targeted support and improvement plans, except for title I schools with low-performing subgroups as described in proposed § 200.19(b)(2), and make the exit criteria publicly available. The proposed regulations would require that, in establishing the exit criteria, an LEA ensure that a school meeting the exit criteria successfully implemented its targeted support and improvement plan such that it no longer meets the criteria for identification and has improved student outcomes for its lowest-performing students, including each subgroup of students that was identified as consistently underperforming, or in the case of a school identified under proposed § 200.15(b)(2)(iii), met the requirement for student participation in assessments, within an LEA-determined number of years.

If a school does not meet the exit criteria within an LEA-determined number of years, the proposed regulations specify that the LEA would:

- Require the school to amend its targeted support and improvement plan to include additional actions that address the reasons the school did not meet the exit criteria and encourage the school to include interventions that meet a higher level of evidence consistent with section 8101(21) than the interventions required to be included in the school's original plan or to increase the intensity of effective interventions included in the school's original plan;
- Review and approve, in the same manner in which the LEA reviewed and approved the original plan, the amended targeted support and improvement plan; and
- Increase its monitoring and support of the school's implementation of the plan.

Schools With Low-Performing Subgroups Requiring Additional Targeted Support

For a school with one or more low-performing subgroups (*i.e.,* subgroups that are performing as poorly as students in the lowest-performing schools in the State) that is identified for targeted support and improvement, as described in proposed § 200.19(b)(2), proposed § 200.22 would require its targeted support and improvement plan to identify and address resource inequities that affect the low-performing subgroup or subgroups. This would include, at a minimum, a review of LEA- and school-level resources among schools and, as applicable, within schools with respect to disproportionate rates of ineffective, out-of-field, or inexperienced teachers identified by the State and LEA under sections 1111(g)(1)(B) and 1112(b)(2) and per-pupil expenditures of Federal, State, and local funds reported annually under section 1111(h)(1)(C)(x), and may include a review of LEA- and school-level budgeting and resource allocation with respect to disproportionate rates of ineffective, out-of-field, or inexperienced teachers and per-pupil expenditures and any other resource, such as access and availability of advanced coursework, preschool programs, and instructional materials and technology.

Further, for a title I school with one or more low-performing subgroups that is identified for targeted support and improvement, the proposed regulations would require that the State establish uniform statewide exit criteria that, at a minimum, ensure that each such school meeting the exit criteria has improved student outcomes for its lowest-performing students, including each subgroup identified as low-performing, and no longer meets the criteria for identification as a targeted support and improvement school. If such a school does not meet the uniform statewide exit criteria for low-performing targeted support and improvement title I schools after a State-determined number of years not to exceed three years, the State would be required to identify that school as a comprehensive support and improvement school, consistent with the requirement in section 1111(c)(3)(D) that a State identify such schools for comprehensive support and improvement at least every three years.

Reasons: Proposed § 200.22 would provide clarity where the statute is ambiguous and reorganize the statutory requirements to facilitate a better understanding of, and compliance with, those requirements. Specifically, proposed § 200.22 would clarify the requirements regarding notice, development, approval, and implementation of targeted support and improvement plans, including provisions to strengthen the rigor and increase effective implementation of plans in schools that fail, over time, to meet exit criteria established by the LEA or State.

Notice

Before a targeted support and improvement plan is implemented, the LEA must provide notice to parents of the school's identification. The proposed regulations would clarify the requirements of such notice, specifically that the notice is timely, understandable, and accessible to all parents, including those with limited English language proficiency and disabilities. Moreover, the proposed regulations would require the notice to clearly explain to parents why a school was identified and how parents can be involved in developing and implementing the school's targeted support and improvement plan, consistent with the statutory requirement for parents to serve as partners in developing these plans. The proposed requirements would enable parents to become meaningfully and actively engaged in efforts to improve their child's school by creating a mechanism for parents to learn how they can become involved in the development and administration of the plan and the issues the plan will be designed to address.

Development of Targeted Support and Improvement Plans

Proposed § 200.22 would also clarify the requirements for the development of the targeted support and improvement plan. First, these requirements would require meaningful, ongoing stakeholder input in the development and implementation of targeted support and improvement plans, as well as that the plans be made available to the public, particularly to ensure transparency for parents of enrolled students and those who are members of consistently underperforming or low-performing subgroups. Plans cannot be implemented in partnership with parents, teachers, and principals if the plan itself is not easily accessible.

Second, the proposed regulations would clarify that the evidence requirements for targeted support and improvement plans are based on the definition of "evidence-based" in section 8101(21) of the ESEA, as amended by the ESSA. Specifically, proposed § 200.22 would require that one or more of a school's activities and interventions, as opposed to all activities, be evidence-based and would require certain considerations regarding the selection of evidence, if practicable. Schools implementing targeted support and improvement plans are more likely to see improvements for low-performing students, including low-performing subgroups of students, if they employ strategies that are grounded in research. Because the evidence base for interventions in low-performing schools that will support the lowest-performing students is nascent, proposed § 200.22 would help support schools in making choices when selecting among evidence-based interventions by encouraging the use of interventions supported by the strongest level of evidence that is available and appropriate based on the needs of the school and that have been proven effective in a setting or sample population that overlaps with the identified school and its needs. This, in turn, would help support effective implementation of the overall plan and improvement in student outcomes for the school as a whole, including the subgroups that are struggling.

Finally, the proposed regulations would clarify that a school identified for targeted support and improvement due to low-performing or consistently underperforming subgroups of students may have a planning year limited to the school year in which the school was identified. This would allow time for the activities necessary to prepare for the successful implementation of interventions specified in the plan, including consulting with stakeholders, analyzing the reasons the school was identified for targeted support, and selecting appropriate evidence-based interventions to address those reasons, and to ensure that such planning does not inordinately delay the full implementation of interventions that are needed to support improved student achievement and school success.

LEA Responsibilities

The proposed regulations would clarify that the targeted support and improvement plan must be submitted by the school to the LEA for review and approval. The LEA would be required to conduct a timely review of the plan and take all actions necessary to ensure that each school is able to meet all of the requirements of proposed § 200.22 to develop and implement the plan within the required timeframe. Further, LEAs would be required to make the approved plans and all approved amendments to the plans publicly available. These clarifications are intended to ensure that plans are approved expeditiously, meet key statutory requirements, and are transparent and widely available to the public, and to prevent significant delays in the implementation of activities and interventions that will help improve student achievement and outcomes for low-performing students, including consistently underperforming subgroups, in identified schools.

Exit Criteria

Proposed § 200.22 would make clear that each LEA must establish and make public exit criteria for schools implementing targeted support and improvement plans in order to meet the statutory requirement that an LEA must require a school that unsuccessfully implements its targeted support and improvement plan to take additional action. These exit criteria must, at a minimum, require that the school no longer meet the criteria for identification as a school for targeted support and improvement and demonstrate improved academic achievement for its lowest-performing students, including underperforming subgroups. These criteria must also be tailored to consider participation in statewide assessments in States that choose to identify schools with low participation rates for targeted support and improvement under proposed § 200.15(b)(2)(iii). Overall, this structure is similar to the parameters for exit criteria for comprehensive support and improvement so that there is consistency across the accountability system. Further, these clarifications would help make clear that schools improving educational outcomes are able to exit targeted support and improvement status, while providing safeguards to ensure that consistently underperforming subgroups do not struggle indefinitely if plans are inadequate or ineffectively implemented, and that schools are provided with additional help and support, when needed.

Schools With Low-Performing Subgroups Requiring Additional Targeted Support

Proposed § 200.22 would clarify and reorganize the statutory requirements that, in the case of a school with low-performing subgroups that are performing as poorly as all students in the lowest-performing five percent of title I schools, the school's targeted support and improvement plan also identifies and reviews resource inequities and their effect on each low-performing subgroup in the school. The proposed regulations would ensure this review is aligned with the review that would be required in comprehensive support and improvement plans, creating coherence across the statewide accountability system. Further, these clarifications are intended to emphasize the importance of equity and encourage LEAs and schools to correct resource disparities (*e.g.,* disproportionate rates with respect to ineffective, out-of-field, or inexperienced teachers and per-pupil expenditures) that will be critical to developing and implementing successful support and improvement plans for schools identified for targeted support and improvement.

Additionally, proposed § 200.22 would clarify the State-developed exit criteria for title I schools with low-performing subgroups and ensure that such a school that has not improved is identified for comprehensive support and improvement on the same timeline on which the State identifies schools in need of comprehensive support and intervention, consistent with 200.19(d)(1)(i). If the targeted support and improvement plan developed by the school has not helped its lowest-performing students, including low-performing subgroups, improve, it is imperative that these students receive the same supports, resources, and attention as similarly performing students in the bottom five percent of schools—those provided by the LEA for schools in comprehensive support and improvement. While many schools identified for comprehensive support and improvement demonstrate low performance among all students, LEAs and the State must also take responsibility and rigorous action to improve student outcomes for schools with low-performing subgroups, particularly when a school-developed improvement plan has not been effective. By providing for comprehensive support and improvement in schools with chronically low-performing subgroups, proposed § 200.22 would help States and LEAs meet the purpose of title I: "providing all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps."

Section 200.23 State Responsibilities To Support Continued Improvement

Statute: Section 1111(d)(3)(A)(ii) of the ESEA, as amended by the ESSA, requires each State to provide support for LEA and school improvement, including the periodic review of resource allocation to support school improvement in LEAs serving significant numbers of schools identified for either comprehensive support and improvement or targeted support and improvement. Section 1111(d)(3)(A)(iii) requires each State to provide technical assistance to each of its LEAs serving significant numbers of schools identified for either comprehensive support and improvement or targeted support and improvement. Section 1111(d)(3)(B)(i) allows a State to take additional improvement actions in any LEA serving a significant number of schools identified for comprehensive support and improvement and not meeting State-established exit criteria or any LEA serving a significant number of schools identified for targeted support and improvement. Section 1111(d)(3)(B)(ii) allows a State to establish alternative evidence-based, State-determined strategies that may be used by LEAs to assist schools identified for comprehensive support and improvement, consistent with State law.

Current Regulations: Section 200.49 describes an SEA's responsibilities to make technical assistance available to schools that have been identified for improvement, corrective action, or restructuring and requires an SEA to take additional actions if it determines that an LEA has failed to carry out its school improvement responsibilities. Section 200.50(a)(1)(ii) requires an SEA to annually review each of its LEAs receiving title I funds to determine whether the LEA is carrying out its responsibilities with respect to school improvement .

Proposed Regulations: Proposed § 200.23 would clarify the statutory requirements in the ESEA related to continued support for school and LEA improvement.

State Review of Resource Allocation

Proposed § 200.23(a) would require each State to periodically review resource allocations for each LEA serving significant numbers of schools identified either for comprehensive or targeted support and improvement. The proposed regulations would further specify that the required review must consider allocations between LEAs and between schools and any inequities identified in school support and improvement plans consistent with proposed § 200.21(d)(4) and § 200.22(c)(7), and would require each State to take action, to the extent practicable, to address any resource inequities identified during its review.

State Responsibilities for Technical Assistance

Proposed § 200.23(b) would require each State to describe in its State plan the technical assistance it will provide to each of its LEAs serving significant numbers of schools identified for either comprehensive support and improvement or targeted support and improvement. The proposed regulations would specify minimum requirements for such technical assistance, including a requirement that the State describe how it will assist LEAs in developing and implementing comprehensive support and improvement plans and ensuring that schools develop and implement targeted support and improvement plans, conducting school-level needs assessments, selecting evidence-based interventions, and reviewing and addressing resource inequities.

Additional State Action To Support LEA Improvement

The proposed regulations also would permit a State to take certain additional improvement actions consistent with section 1111(d)(3)(B) of the ESEA, as amended by the ESSA. Proposed § 200.23(c)(1) would permit a State to take additional improvement actions in (1) any LEA, or authorized public chartering agency consistent with State charter school law, serving a significant number of schools identified for comprehensive support and improvement and not meeting State-established exit criteria, or (2) any LEA, or authorized public chartering agency consistent with State charter school law, serving a significant number of schools implementing targeted support and improvement plans. Such actions could include, for each school that does not meet State-established exit criteria following implementation of a comprehensive support and improvement plan, reorganizing the school to implement a new instructional model; replacing school leadership; converting the school to a public charter school; changing school governance; closing the school; or, in the case of a public charter school, revoking or non-renewing the school's charter consistent with State charter school law.

In addition, proposed § 200.23(c)(2) would allow a State to establish an exhaustive or non-exhaustive list of State-approved, evidence-based interventions for use in schools implementing comprehensive or targeted support and improvement plans. Proposed § 200.23(c)(3) would permit a State to establish, or to use previously developed and established, evidence-based, State-determined interventions, which may include whole-school reform models, for use by LEAs to assist schools identified for comprehensive support and improvement. Proposed § 200.23(c)(4) would allow a State to establish a process for review and approval of amended targeted support and improvement plans developed following a school's unsuccessful implementation of its targeted support and improvement plan, consistent with proposed § 200.22(e)(2).

Reasons: The proposed regulations would clarify State responsibilities to provide support and technical assistance to LEAs with significant numbers of schools identified for either comprehensive support and improvement or targeted support and improvement. A key purpose of the proposed regulations is to ensure that the support and technical assistance from the State required by section 1111(d)(3)(A) is provided in a timely manner to support LEAs. The proposed regulations would also reinforce the LEA's role in development and implementation of effective support and improvement plans for low-performing schools. Similarly, the proposed regulations would require States to periodically review and take action, to the extent practicable, to address any resource inequities uncovered by their review of resource allocation between LEAs and schools; such action would support effective implementation of improvement plans by helping to coordinate actions at the State, district, and school levels and promote making sufficient resources available to support improvement. We encourage States to time their periodic review of resource allocation to align with existing, ongoing processes for reviewing the support they provide to LEAs and schools, such as each time the State submits its title I plan to the Department, or each time it identifies its lowest-performing schools.

The proposed regulations also would help ensure that the technical assistance provided by States is aligned with the statutory school improvement requirements, including those related to conducting needs assessments for schools identified for comprehensive support and improvement, the use of evidence-based interventions, and review of resource inequities. Such technical assistance is essential to building local capacity at both the LEA and school levels to carry out critical new responsibilities under the ESSA, including greater use of evidence-based interventions.

In addition, the proposed regulations would clarify State authority to take additional actions aimed at ensuring effective local implementation of comprehensive and targeted support and improvement plans. For example, the proposed regulations specify that States may take additional improvement actions in LEAs, as well as in authorized public chartering agencies consistent with State charter school law, so that States have tools to support the capacity of these entities to help improve low-performing schools. Further, permitting States to establish or maintain lists of evidence-based interventions would facilitate the selection and implementation of evidence-based improvement actions by LEAs with schools identified for improvement. The proposed regulations also would clarify that the alternative, evidence-based, State-determined strategies authorized by section 1111(d)(3)(B)(ii) may include whole-school reform strategies that could simplify LEA efforts to identify appropriate, comprehensive approaches to turning around their lowest-performing schools.

Finally, the proposed regulation recognizes the critical role of States in providing additional support to schools that were identified for targeted support and improvement and did not implement their plans successfully, by permitting States to establish a review and approval process for such schools' amended targeted support and improvement plans. Implementation of a State-level review and approval process would help ensure that LEAs and affected schools benefit from the State's experience in working with schools facing similar challenges and increase the likelihood that the additional actions proposed for such schools are of sufficient rigor to ensure meaningful improvement for consistently underperforming and low-performing subgroups of students.

Section 200.24 Resources To Support Continued Improvement

Statute: Section 1003 of the ESEA, as amended by the ESSA, provides dedicated resources for school improvement.

Under section 1003(a), States must reserve seven percent of title I, part A allocations for school improvement, at least 95 percent of which must be distributed to LEAs either competitively or by formula to serve schools implementing comprehensive or targeted support and improvement activities, including the implementation of evidence-based interventions, under section 1111(d). Section 1003(c) allows States to award subgrants for up to four years, which may include one planning year.

Under section 1003, States must prioritize funds for LEAs that serve high numbers, or a high percentage, of schools identified for comprehensive support and improvement; LEAs with the greatest need for such funds, as defined by the State; and LEAs with the strongest commitment to improving student achievement and outcomes. Additionally, subgrants must be of sufficient size to enable an LEA to effectively implement selected strategies, and LEAs receiving a subgrant must represent the geographic diversity of the State.

Section 1003(b)(1)(B) allows a State, with the approval of the LEA, to directly provide for the improvement activities required under section 1111(d) or to arrange for their provision through other entities such as school support teams, educational service agencies, or nonprofit or for-profit external providers with expertise in using evidence-based strategies to improve student achievement, instruction, and schools. Additionally, under section 1003(b)(2), States are required to use any funds not distributed to LEAs to establish a method to allocate funds under section 1003, to monitor and evaluate the use of such funds by LEAs, and, as appropriate, to reduce barriers and provide operational flexibilities for schools in the implementation of comprehensive and targeted support and improvement activities under section 1111(d). In addition, section 1003(i) requires States to include on State report cards a list of all LEAs and schools receiving funds under section 1003, including the amount of funds each school received and the types of strategies each school implemented.

To receive funds under section 1003, an LEA must submit an application to the State that includes, at a minimum, a description of how the LEA will carry out its responsibilities for school improvement under section 1111(d), including how the LEA will: Help schools develop and implement comprehensive and targeted support and improvement plans; monitor schools receiving funds under section 1003; use a rigorous review process to recruit, screen, select, and evaluate any external partners with whom the LEA will partner; align other Federal, State, and local resources to carry out the activities supported with funds under section 1003; and, as appropriate, modify practices or policies to provide operational flexibility that enables full and effective implementation of school improvement plans.

Current Regulations: Section 200.99 requires each State to reserve two percent of its fiscal year 2003 and 2004 title I, part A allocation, and four percent of its title I, part A allocation for each succeeding fiscal year, to carry out State and local responsibilities for school improvement under sections 1116 and 1117 of the ESEA, as amended by NCLB.

Section 1003(g) of the ESEA, as amended by NCLB, authorized an additional source of school improvement funding through the School Improvement Grants (SIG) program, which was first funded in fiscal year 2007 and which provided formula grants to States that then were competitively subgranted to LEAs to support the activities required under sections 1116 and 1117.

Following a one-time appropriation of $3 billion for SIG under the American Recovery and Reinvestment Act of 2009, the Department promulgated regulations to significantly strengthen the SIG program.

Proposed Regulations: Proposed § 200.24 would clarify the new requirements included in the ESEA, as amended by the ESSA, for funds that the State must set aside for LEAs to support schools implementing comprehensive and targeted support and improvement plans.

LEA Eligibility

The proposed regulations would clarify that an LEA is eligible for school improvement funds under section 1003(a) if it has one or more schools identified for comprehensive support and improvement or targeted support and improvement and if it applies to serve each school identified for comprehensive support and improvement before applying to serve a school identified for targeted support and improvement. Proposed § 200.24 would also clarify that funds may not be used to serve schools that are identified for targeted support and improvement under proposed § 200.15(b)(2)(iii) for low assessment participation rates, if the State chooses to identify such schools for targeted support and improvement, because funds for school improvement provided under section 1003 are intended to serve low-performing schools, including schools with low-performing subgroups, that are identified on the basis of the indicators under proposed § 200.14.

LEA Application

Proposed § 200.24 would require that an LEA seeking school improvement funds submit an application to the State that includes, at a minimum—

- A description of one or more evidence-based interventions based on strong, moderate, or promising evidence consistent with section 8101(21) that will be implemented in each school the LEA proposes to serve;
- A description of how the LEA will: (1) Carry out its responsibilities to develop and implement a comprehensive support and improvement plan that meets the requirements in proposed § 200.21 for each school identified for comprehensive support and improvement that the LEA applies to serve, and (2) support each school identified for targeted support and improvement that the LEA applies to serve in developing, approving, and implementing a targeted support and improvement plan under proposed § 200.22;

- A budget indicating how it will allocate school improvement funds among schools identified for comprehensive and targeted support and improvement that it intends to serve;
- The LEA's plan to monitor each school for which the LEA receives school improvement funds, including its plan to increase monitoring of schools that do not meet State or LEA exit criteria, as applicable;
- A description of the rigorous review process that the LEA will use to recruit, screen, select, and evaluate any external providers with which the LEA intends to partner;
- A description of how the LEA will align other Federal, State, and local resources to carry out the activities in the schools it applies to serve and sustain effective activities in such schools after funding under section 1003 is completed;
- As appropriate, a description of how the LEA will modify practices and policies to provide operational flexibility, including with respect to school budgeting and staffing, that will help enable full and effective implementation of the school's comprehensive or targeted support and improvement plan under proposed §§ 200.21 and 200.22;
- For an LEA that plans to allow a school to use the first year, or a portion of the first year, it receives school improvement funds for planning activities, a description of those planning activities, the timeline for implementation of those activities, and a description of how those activities will support successful implementation of the school's comprehensive or targeted support and improvement plan; and
- An assurance that each school the LEA proposes to serve will receive all of the State and local funds it would have otherwise received.

State Allocation of Funds

The proposed regulations would also clarify the State's responsibilities in allocating school improvement funds to LEAs. Specifically, they would require that a State review, in a timely manner, each LEA application and award funds to an LEA application that meets the requirements of the proposed regulations in an amount that is of sufficient size to enable the LEA to effectively implement the comprehensive or targeted support and improvement plan. Under the proposed regulations, to be of sufficient size, each award would be at least $50,000 per school identified for targeted support and improvement the LEA is applying to serve and at least $500,000 for each school identified for comprehensive support and improvement the LEA is applying to serve, except that a State could conclude, based on a demonstration from the LEA in its application, that a smaller award would be sufficient to successfully implement the plan in a particular school.

If a State has insufficient school improvement funds to make awards to all eligible LEAs that are of sufficient size, the proposed regulations would require that a State, whether through formula or a competition, award funds to an LEA applying to serve a school identified for comprehensive support and improvement before awarding funds to an LEA applying to serve a school identified for targeted support and improvement. Further, the proposed regulations would require that a State prioritize its funding such that it—

- Gives priority in funding to an LEA that demonstrates the greatest need for the funds, as determined by the State, based, at a minimum, on the number or percentage of schools in the LEA implementing either a comprehensive or targeted support and improvement plan and based on the State's review of resource inequities among and within LEAs, required under proposed § 200.23(a);
- Gives priority in funding to an LEA that demonstrates the strongest commitment to using the school improvement funds to enable the lowest-performing schools to improve, taking into consideration, with respect to each school the LEA proposes to serve: (1) The proposed use of evidence-based interventions that are supported by the strongest level of evidence available; and (2) commitment to family and community engagement; and
- Considers geographic diversity within the State. The proposed regulations would further require that a State make awards to LEAs either on a competitive or formula basis for not more than four years, which may include a planning year. If a State permits an LEA to have a planning year with respect to a particular school, the State would be required to review the performance of the LEA during the planning year against the LEA's approved application and determine that the LEA will be able to ensure that the school fully implements the activities and interventions that will be supported with school improvement funds by the beginning of the next school year before renewing the school improvement award.

State Responsibilities

The proposed regulations would require that each State—

- Establish the method to allocate school improvement funds;
- Monitor the use of school improvement funds;
- Evaluate the use of school improvement funds including by, at a minimum, engaging in ongoing efforts to examine the effects of the evidence-based interventions implemented using school improvement funds on student outcomes and other relevant outcomes and disseminate its findings to LEAs with schools required to implement evidence-based interventions;
- Determine that the school is making progress on the indicators in the statewide accountability system in proposed § 200.14 prior to renewing an LEA's award of school improvement funds with respect to a particular school is implementing evidence-based interventions with fidelity to the requirements in proposed §§ 200.21 and 200.22 in the LEA's application; and
- Reduce barriers and provide operational flexibility for schools in LEAs receiving school improvement funds, including with respect to school budgeting and staffing, as appropriate.

Further, the proposed regulations would clarify that a State may set aside up to five percent of its school improvement fund reservation under section 1003(a) of the ESEA, as amended by the ESSA, to carry out these five activities.

Finally, the proposed regulations would clarify that a State may directly provide for school improvement activities or arrange for their provision through an external partner, such as school support teams, educational service agencies, or nonprofit or for-profit entities. An external partner would be required to have expertise in using evidence-based strategies to improve student achievement, instruction, and schools, and the proposed regulations would require that, with respect to each school, either the State has the authority to take over the school consistent with State law or the LEA approves the arrangement. If the State arranges for the provision of services through an external partner, the regulations would require that the State undertake a rigorous review process in recruiting, screening, selecting, and evaluating an external partner the State uses to carry out the activities and the external partner have a demonstrated success implementing the evidence-based interventions that it will implement.

Reporting

The proposed regulations would require that each State include in its State report card a list of all the LEAs and schools receiving school improvement funds, including the amount of funds each LEA receives to serve each school and the type of intervention or interventions being implemented in each school with school improvement funds.

Reasons: The proposed regulations would clarify State and LEA responsibilities to ensure that the schools in need of the most support receive funds under section 1003 of the ESEA, as amended by the ESSA, and use such funds appropriately and effectively to improve student outcomes and school success. We propose to update the current regulations to address the increased State reservation of funds required by the statute and explain how these funds must be used to reinforce the statutory requirements for supporting school improvement in schools identified under section 1111(d).

LEA Eligibility

Proposed § 200.24 would clarify that States should prioritize funding to serve schools identified for comprehensive support and improvement. Schools in comprehensive support and improvement have been identified due to systemic low performance or graduation rates for all students, or chronically low-performing subgroups of students. We recognize that, given limited resources, pervasive, schoolwide challenges in student performance and outcomes should be addressed with improvement funds prior to addressing challenges in schools that are localized or smaller in scope.

LEA Application

Proposed § 200.24 would clarify the statutory components of each LEA's application for funds under section 1003 from the State, with a particular emphasis on how the application requirements align with the expectations of LEAs to support schools identified for comprehensive or targeted support and improvement under section 1111(d), in implementing evidence-based interventions. Proposed § 200.24 would specify that one or more school interventions funded under section 1003 must meet a higher level of evidence (*i.e.*, strong, moderate, or promising levels of evidence), even though other interventions that can be included in support and improvement plans under section 1111(d) could meet a lower evidence level. Similarly, the proposed regulations would clarify how the planning year that is permitted for a school in comprehensive or targeted support and improvement under proposed §§ 200.21 and 200.22 is distinct from a planning year for use of section 1003 funds to ensure that receipt of school improvement funding does not delay full implementation of a support and improvement plan under section 1111(d).

In addition, the proposed regulations would clarify the minimum requirements an LEA must address in its application to the State to receive funds under section 1003 to ensure effective local implementation of comprehensive support and improvement plans and targeted support and improvement plans for schools in LEAs that receive school improvement funds. For example, in addition to describing the LEA's plan to monitor each school for which the LEA receives school improvement funds, the LEA would also be required to include its plan to increase monitoring of schools that do not meet the exit criteria. This would help ensure that schools identified for comprehensive or targeted support and improvement do not linger in such a status for multiple years without increased attention from the LEA, and reinforce the goals of the statewide accountability system. An LEA would also describe how it will plan for school improvement activities to be sustained in schools once funding is completed, in addition to describing how it will align Federal, State, and local resources.

State Allocation of Funds

To ensure funding for school improvement has a meaningful impact, particularly for schools that are the lowest-performing in the State and require comprehensive support and improvement and whole-school reform, the proposed regulations would require States to allocate grants of sufficient size so that each school identified for comprehensive support and improvement would receive at least $500,000 per year and each school identified for targeted support and improvement would receive at least $50,000 per year, unless the LEA provides a justification to the State that a lesser amount would be sufficient. The minimum award amount of $500,000 for a school identified for comprehensive support and improvement would help ensure that it has the resources it needs to implement the comprehensive interventions that will lead to sustained school improvements. The amount is based on data about the size of awards under the School Improvement Grants program, under which low-performing schools implemented whole-school comprehensive reform models aimed at turning around the schools' performance.[16] The minimum award amount of $50,000 for a school identified for targeted support and improvement would ensure that school improvement resources are not spread so thinly across LEAs in the State that funds for an individual school are inadequate to support high-quality, faithful implementation of an evidence-based intervention that will improve student and school outcomes and assist the school in exiting improvement status.

The proposed regulations would also emphasize that, in determining the greatest need for funds if insufficient funds are available to award a grant of sufficient size to all LEAs, States must examine the number and percentage of schools identified in the LEA for comprehensive or targeted support and improvement, the resource inequities the State has identified under proposed § 200.23, and academic achievement and student outcomes in the identified schools. Similarly, in determining the strongest commitment, a State must examine the proposed use of evidence-based interventions, and the LEA's commitment to family and community engagement. The purpose of these proposed regulations is to increase the likelihood that funds are awarded to LEAs that will successfully implement interventions in schools identified for comprehensive or targeted support and improvement. Specifically, the use of more rigorous evidence-based interventions and strong support from the local community are likely to increase a school's chances of significantly improving student achievement and outcomes.

State Responsibilities

Proposed § 200.24 would clarify the statutory requirements for States to support LEAs in using funds under section 1003, and help align these responsibilities with the expectations on the State to support schools identified for comprehensive or targeted support and improvement under section 1111(d). For example, States would be required to evaluate the use of funds under section 1003 including by examining the effects of evidence-based interventions on student achievement and outcomes in schools supported by 1003 funds and disseminating those results to LEAs. This activity would reinforce the technical assistance States would be providing to LEAs under proposed § 200.23, which will be critical to guide LEAs' and schools' implementation of the new evidence requirements in the statute and to help build stronger evidence of effective interventions. By specifying the minimum requirements a State must meet, States will be better equipped to support effective implementation of comprehensive support and improvement plans and targeted support and improvement plans for schools in LEAs that receive funds under section 1003.

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[16] See Hulburt, S., Therriault, S.B., Le Floch, K.C., and Wei, T. (2012). "School improvement grants: Analyses of state applications and eligible and awarded schools." U.S. Department of Education, Institute of Education Sciences, pp. 29–34.

Section 200.30 Annual State Report Card

Statute: Section 1111(h)(1)(A) of the ESEA, as amended by the ESSA, requires a State that receives assistance under title I, part A to disseminate widely to the public an annual State report card for the State as a whole. Section 1111(h)(1)(B) of the ESEA, as amended by the ESSA, further requires the State report card to be: Concise; presented in an understandable and uniform format that is developed in consultation with parents; presented to the extent practicable in a language that parents can understand; and widely accessible to the public.

In addition, section 1111(h)(1)(C) of the ESEA, as amended by the ESSA, establishes minimum requirements for the content of State report cards, including requirements for a State to include disaggregated information for certain data elements by subgroup. Included among the subgroups for which disaggregation is required for some data elements are migrant status, homeless status, status as a child in foster care, and status as a student with a parent who is a member of the Armed Forces on active duty.

Finally, section 1111(i) of the ESEA, as amended by the ESSA, provides that disaggregation of data for State report cards shall not be required if such disaggregation will reveal personally identifiable information about any student, teacher, principal, or other school leader, or will provide data that are insufficient to yield statistically reliable information.

Current Regulations: None.

Proposed Regulations: Proposed § 200.30 would require a State to prepare and disseminate widely to the public an annual State report card that includes information on the State as a whole and is concise and presented in an understandable and uniform format and in a manner accessible to the public, including the parents of students in the State.

Proposed § 200.30(a) restates statutory requirements that a State that receives title I, part A funds must prepare and disseminate widely to the public an annual State report card, which must include, at a minimum the information required under section 1111(h)(1)(C) of the ESEA, as amended by the ESSA. It also requires that State report cards include, for each authorized public chartering agency in the State, demographic and academic achievement data for each school authorized by such agency compared to the community in which the charter school is located.

Proposed § 200.30(b) restates the statutory requirement that a State report card be concise and presented in an understandable and uniform format that is developed in consultation with parents. It also would clarify that to meet these requirements, a State, in addition to meeting all minimum requirements under section 1111(h)(1)(C) of the ESEA, as amended by the ESSA, must develop with parental input a report card format that begins with a clearly labeled overview section that is prominently displayed. Under proposed § 200.30(b), the overview section of a State report card would include statewide results for all students and, at a minimum, each subgroup of students described in proposed § 200.16(a)(2) on the following: The State's academic assessments in each of reading/language arts, mathematics, and science; each measure within the Academic Progress indicator for public elementary schools and secondary schools that are not high schools; the four-year adjusted cohort graduation rate, and each measure within each indicator of School Quality or Student Success. In addition, the overview section would include the number and percentage of English learners achieving English language proficiency on the State's English language proficiency assessment.

Proposed § 200.30(c) would also require that each State report card be in a format and language, to the extent practicable, that parents can understand consistent with proposed § 200.21(b)(1)–(3).

Proposed § 200.30(d) would restate the statutory requirements for a State to disseminate widely to the public the State report card, which at a minimum must be made available on a single page of the SEA's Web site, and to include on the SEA's Web site the report card for each LEA in the State required under proposed § 200.31 as well as the annual report to the Secretary required under section 1111(h)(5) of the ESEA, as amended by the ESSA.

Proposed § 200.30(e) would require the dissemination of the State report cards no later than December 31 each year, beginning with report cards based on information from the 2017–2018 school year. If a State is unable to meet this deadline for the 2017–2018 school year for some or all of the newly required information under section 1111(h)(1)(C) of the ESEA, as amended by the ESSA, proposed § 200.30(e) would allow the State to request from the Secretary a one-time, one-year extension for reporting on such required elements of the report cards. A State would be required to submit an extension request to the Secretary by July 1, 2018, and include evidence demonstrating that the State cannot meet the deadline, as well as a plan and timeline for how the State would publish the newly required information by December 31, 2019.

Finally, proposed § 200.30(f) would define certain terms related to the subgroups for which disaggregated data must be reported under section 1111(h) of the ESEA, as amended by the ESSA. It would clarify the meaning of the terms "migrant status," "homeless status," "child in foster care status," and "student with a parent who is a member of the armed forces on active duty" by reference to established statutory and regulatory definitions. Proposed § 200.30(e) would also clarify that, consistent with proposed § 200.17, disaggregation on State and LEA report cards is not required if the number of students in the subgroup is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about a student.

Reasons: State report cards were conceived under the ESEA, as amended by the NCLB, as a mechanism to increase the availability of school accountability data for parents and the public, enabling them to reward and hold accountable public officials, State and local administrators, and educators for the performance of their public schools. Built on decades of education performance reporting that started with the Nation's Report Card in 1969, school performance reporting requirements under the ESEA, as amended by the NCLB, significantly expanded the depth and breadth of accountability data available to parents and the public. These audiences had to make meaning out of the data provided on report cards, which were often lengthy and complex despite requirements that they be concise and understandable.

With respect to State report cards, section 1111(h)(1) of the ESEA, as amended by the ESSA, maintains the requirement that report cards be concise and understandable. At the same time, however, report cards must include valuable new data elements, which could make report cards longer and more complex, and if confusing, potentially not as useful to stakeholders. As a result, we are proposing § 200.30 to clarify what States must do to meet these seemingly conflicting requirements. In addition, we are requiring that State report cards provide information for each authorized public chartering agency in the State in order to provide transparency regarding the demographic composition and academic achievement of charters schools authorized by such agency as compared to the broader community in which the schools are located.

Proposed § 200.30 would require States to develop a format and process to share report cards with parents, as well as the public in a manner that is concise, accessible, informative, timely, and understandable. The proposed regulations would specify that States design and disseminate an overview section that would be prominently displayed on annual report cards. These requirements would help parents and the public more effectively access and use State-level data.

The proposed regulations would also encourage States to creatively design and publish report cards that are truly concise while not abandoning minimum report card requirements related to transparent and accurate presentation of a broad range of data. These requirements would maintain a commitment to the civil rights legacy of the ESEA by ensuring that objective, disaggregated evidence of student academic achievement, graduation rates, other academic indicators, and indicators of school quality or success are visible to the public in a format that clearly conveys where gaps exist between subgroups of students.

Proposed § 200.30(c)–(d) is also intended to provide clarity to States related to statutory reporting requirements that call for report cards to be widely accessible, including on the SEA's Web site. To clarify this statutory requirement, proposed § 200.30(c) would require that report cards be provided in a format and language, to the extent practicable, that parents can understand, increasing the access and availability to all members of the public, regardless of language barrier or disability.

Proposed § 200.30(e) would also require States to make report cards publicly available no later than December 31 each year. This would create a more well-informed public that is better prepared to work with educators and local school officials during the school year to effectively address and close achievement, opportunity, and equity gaps in a timely manner.

To ensure States and LEAs disaggregate student data on report cards so that it is accurate and comparable across and within States and LEAs, proposed § 200.30(f) would define the terms used to identify certain subgroups for which disaggregated data must be provided under applicable reporting requirements in section 1111(h)(1)(C) of the ESEA, as amended by the ESSA. Specifically, proposed § 200.30(f) would clarify the meaning of the terms "migrant status," "homeless status," "child in foster care status," and "student with a parent who is a member of the Armed Forces on active duty" by reference to established statutory and regulatory definitions. In addition to clarifying these definitions, proposed § 200.30 would also correct a technical error under section 1111(h)(1)(C)(ii) of the ESEA, as amended by the ESSA, which defines "active duty" by reference to 10 U.S.C. 101(d)(5). Section 101(d)(5) of title 10 of the United States Code defines "full-time National Guard duty," not "active duty." "Active duty" is defined under 10 U.S.C. 101(d)(1) to mean full-time duty in the active military service of the United States, including "full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty." Finally, to ensure States and LEAs report disaggregated data that is reliable and protects student privacy, proposed § 200.30 would also reinforce statutory requirements under section 1111(i) of the ESEA, as amended by the ESSA, and proposed § 200.17, which require that disaggregated data only be shared when information is statistically reliable and in a format that protects the identity of individual students.

The Department will pursue options to help ensure the transparency, accessibility, and utility of State report cards, which may include providing links to State report cards on our Web site.

Section 200.31 Annual LEA Report Card

Statute: Section 1111(h)(2)(A) of the ESEA, as amended by the ESSA, requires an LEA that receives assistance under title I, part A to prepare and disseminate an annual LEA report card that includes information on the LEA as a whole and each school served by the LEA. Section 1111(h)(2)(B) of the ESEA, as amended by the ESSA, further requires that each LEA report card be: Concise; presented in an understandable and uniform format; presented to the extent practicable in a language that parents can understand; and accessible to the public. Further, LEA report cards must be available on the LEA's Web site, if the LEA operates a Web site. If the LEA does not operate a Web site, the LEA must make the report card available to the public in another manner determined by the LEA.

In addition, sections 1111(h)(1)(C) and 1111(h)(2)(C) establish minimum requirements for the content of LEA report cards, including requirements for an LEA to include disaggregated information for certain data elements by subgroup. Included among the subgroups for which disaggregation is required for some data elements are migrant status, homeless status, status as a child in foster care, and status as a student with a parent who is a member of the Armed Forces on active duty.

Finally, section 1111(i) of the ESEA, as amended by the ESSA, provides that disaggregation of data for LEA report cards shall not be required if such disaggregation will reveal personally identifiable information about any student, teacher, principal, or other school leader, or will provide data that are insufficient to yield statistically reliable information.

Current Regulations: None.

Proposed Regulations: Proposed § 200.31 would require an LEA to prepare and disseminate to the public an annual LEA report card that includes information on the LEA as a whole and each school served by the LEA and that is concise and presented in an understandable and uniform format and in a manner accessible to the public, including parents of students in the LEA.

Proposed § 200.31(a) restates statutory requirements that an LEA that receives title I, part A funds must prepare and disseminate to the public an annual LEA report card, which must include, at a minimum, the information required under section 1111(h)(1)(C) of the ESEA, as amended by the ESSA, for the LEA as a whole and each school served by the LEA.

Proposed § 200.31(b) restates the statutory requirement that an LEA report card be concise and presented in an understandable and uniform format. Proposed § 200.31(b) would clarify that, to meet these requirements, an LEA, in addition to meeting all minimum requirements under section 1111(h)(2)(C) of the ESEA, as amended by the ESSA, must develop a report card format in consultation with parents, that begins with, for the LEA as a whole and for each school served by the LEA, a clearly labeled overview section that is prominently displayed and that, for each school served by the LEA, can be distributed to parents on a single piece of paper. Proposed § 200.31(b) would require that the overview section include, at a minimum, for the LEA as a whole and for each school served by the LEA, the same information as is required on State report cards under proposed § 200.30(b)(2), for all students and each subgroup of students described in proposed § 200.16(a)(2). In addition, proposed § 200.31(b) would require the overview section for the LEA as a whole to include information on the achievement on the State's academic assessments in reading/language arts, mathematics, and science of students served by the LEA compared to students in the State as a whole, and the overview section for each school to include corresponding information for the school's students compared to students served by the LEA and the State as a whole. The overview section would also be required to include, for each school, information on school-level accountability results, including, as applicable, identification for comprehensive or targeted support and improvement described in proposed §§ 200.18 and 200.19 and, for the LEA and for each school, basic LEA or school identifying information (*e.g.*, name, address, phone number, and status as a participating Title I school).

Proposed § 200.31(c) would also require that each LEA report card be in a format and language, to the extent practicable, that parents can understand consistent with proposed § 200.21(b)(1)–(3).

Proposed § 200.31(d) would restate the statutory requirements for an LEA report card to be made available on the LEA's Web site, except that an LEA that does not operate a Web site may provide the information to the public in another manner determined by the LEA. Proposed § 200.31(d) would further require that the LEA provide the information required for the overview section under proposed § 200.31(b)(2) to parents of each student enrolled in each school in the LEA directly though such means as regular mail or email and in a timely manner consistent with § 200.31(e).

Proposed § 200.31(e) would require the dissemination of LEA report cards on the same timeline as State report cards under proposed § 200.30(e). If an LEA is unable to meet this deadline for some or all of the newly required information under section 1111(h)(1)(C) of the ESEA, as amended by the ESSA, proposed § 200.31(e) would allow the State to request from the Secretary, on behalf of the LEA, a one-time, one-year extension for reporting on such required elements consistent with the requirements for State report card extensions under § 200.31(e)(2). Additionally, proposed § 200.31(f) would incorporate by reference the requirements regarding disaggregation of data under proposed § 200.30(f).

Reasons: For the same reasons as the parallel requirements for annual State report cards under proposed § 200.30, proposed § 200.31 would require LEAs to develop a format and process for developing and disseminating LEA report cards in a manner that is concise, accessible, informative, timely, and understandable. With respect to LEA report cards in particular, there is evidence that when school quality information, including information about school accountability results, is provided to parents, they pay attention and respond. This suggests that concise presentation of school quality data would increase the likelihood that more parents are knowledgeable about the academic achievement of their children and the students in their community, and the performance of their child's school, including the relative standing of the school compared to LEA-wide and statewide performance.[17]

Recognizing the importance of LEA and school information to parents, proposed § 200.31(d) includes an additional requirement, not included in the State report card requirements under proposed § 200.30, that would require an LEA to provide the information required for the overview section under proposed § 200.31(b)(2) to parents of each student enrolled a school served by the LEA directly though such means as regular mail or email and in a timely manner consistent with proposed § 200.31(e). This proposed requirement is necessary to ensure that key information about LEA and school performance reaches parents on a timeline such that they have relevant information to work effectively with educators and local school officials during the school year.

Section 200.32 Description and Results of a State's Accountability System

Statute: Section 1111(h)(1)(C)(i) and section 1111(h)(2)(C) of the ESEA, as amended by the ESSA, require State and LEA report cards to include a description of the State's accountability system under section 1111(c) of the ESEA, as amended by the ESSA, including:

- The minimum number of students that the State determines are necessary to be included in each of the subgroups of students, as defined in section 1111(c)(2), for use in the accountability system;
- The long-term goals and measurements of interim progress for all students and for each of the subgroups of students, as defined in section 1111(c)(2);
- The indicators described in section 1111(c)(4)(B) used to meaningfully differentiate all public schools in the State;
- The State's system for meaningfully differentiating all public schools in the State, including: The specific weight of the indicators described in section 1111(c)(4)(B) in such differentiation; the methodology by which the State differentiates all such schools; the methodology by which the State identifies a school as consistently underperforming for any subgroup of students described in section 1111(c)(4)(C)(iii), including the time period used by the State to determine consistent underperformance; and the methodology by which the State identifies a school for comprehensive

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[17] Black, S.E. (1999). "Do better schools matter? Parental valuation of elementary education." Quarterly Journal of Economics, 114 (2): 577–99.

Charbonneau, E., & Van Ryzin, G.G. (2012). "Performance measures and parental satisfaction with New York City Schools." American Review of Public Administration, 42 (1): 54–65.

Figlio, D.N. & Lucas, M.E. (2004). "What's in a grade? School report cards and the housing market." American Economic Review, 94 (3): 591–604.

Hastings, J.S. & Weinstein, J.M. (2008). "Information, school choice, and academic achievement: Evidence from two experiments." Quarterly Journal of Economics, 123 (4): 1373–414.

Jacobsen, R. & Saultz, A. (2013). "Do good grades matter? Public accountability data and perceptions of school quality." In The Infrastructure of Accountability, ed. Anagnostopoulos, D., Rutledge, S.A., & Jacobsen, R. Cambridge, MA: Harvard Education Press.

Jacobsen, R., Saultz, A. & Snyder, J.W. (2013). "When accountability strategies collide: Do policy changes that raise accountability standards also erode public satisfaction?" Educational Policy, 27 (2): 360–89.

Koning, P. & Wiel, K.V.D. (2013). "Ranking the Schools: How school-quality information affects school choice in the Netherlands." Journal of the European Economic Association, 11 (2): 466–493.

Nunes, L.C., Reis, A.B., & Seabra, C. (2015). "The publication of school rankings: A step toward increased accountability?" Economics of Education Review, 49 (December): 15–23.

Rockoff, J.E. & Turner, L.J. (2008). *Short run impacts of accountability on school quality.* Working Paper 14564, National Bureau of Economic Research, *http://www.nber.org/papers/w14564.*

support and improvement as required under section 1111(c)(4)(D)(i);

- The number and names of all public schools in the State identified by the State for comprehensive support and improvement under section 1111(c)(4)(D)(i) or implementing targeted support and improvement plans under section 1111(d)(2); and
- The exit criteria established by the State as required under section 1111(d)(3)(A)(i) for schools in comprehensive support and improvement and for schools requiring additional targeted support, including the number of years by which a school requiring additional targeted support must meet the exit criteria as established under section 1111(d)(3)(A)(i)(II).

Current Regulations: None.

Proposed Regulations: Proposed § 200.32(a) would restate the statutory requirements in section 1111(h)(1)(C)(i) of the ESEA, as amended by the ESSA, for describing the State's current accountability system on State report cards and clarify that the description must include:

- The minimum number of students under proposed § 200.17;
- The long-term goals and measurements of interim progress under proposed § 200.13;
- The indicators under proposed § 200.14 and the State's uniform procedure for averaging data across years or combining data across grades under proposed § 200.20, if applicable;
- The system of annual meaningful differentiation under proposed § 200.18, including the weight of each indicator, how participation rates factor into such differentiation consistent with proposed § 200.15, and the methodology to differentiate among schools using performance levels and summative ratings;
- The methodology used to identify schools with one or more consistently underperforming subgroups for targeted support and improvement consistent with proposed § 200.19(c);
- The methodology used to identify schools for comprehensive support and improvement consistent with proposed § 200.19(a); and
- The exit criteria established by the State under §§ 200.21(f) and 200.22(f) for schools in comprehensive support and improvement and for schools in targeted support and improvement with low-performing subgroups consistent with proposed § 200.19(b)(2), including the number of years by which schools must meet the applicable exit criteria.

Further, proposed § 200.32(b) would clarify that, to the extent that a description of the required accountability system elements is provided in the State plan or in another location on the SEA's Web site, a State or LEA may provide the Web address or URL of, or direct link to, the State plan or other location on the SEA's Web site to meet the reporting requirements for these accountability system elements. The Web site content referred to in such a Web address or link must be in a format and language that parents can understand, in compliance with the requirements under § 200.21(b)(1)–(3).

Proposed § 200.32(c) would also require LEA report cards to include, for each school served by the LEA, the performance level described in proposed § 200.18(b)(3) on each indicator under proposed § 200.14, as well as the school's single summative rating described in proposed § 200.18(b)(4). In reporting each school's performance level on each of the accountability system indicators, an LEA would be required to include, if the State accountability system includes more than one measure within any indicator, results on all such measures individually in addition to the performance level for each indicator (which takes into account the school's results on all of the measures within the indicator).

Proposed § 200.32(c) would also require State and LEA report cards to include the reason for which the State identified a school for comprehensive support and improvement under proposed § 200.19(a) (*i.e.,* lowest-performing school, low graduation rates, chronically low-performing subgroups). In the case that a school is identified for comprehensive support with one of more chronically low-performing subgroups of students under proposed § 200.19(a)(3), State and LEA report cards would be required to include the name of the subgroup or subgroups of students that led to such identification. State and LEA report cards would also be required to indicate, for each school identified for targeted support and improvement under proposed § 200.19(b), the reason for such identification (*i.e.,* consistently underperforming subgroups or low-performing subgroups) and the subgroup or subgroups of students that led to such identification.

Reasons: Proposed § 200.32 is intended to ensure that parents, teachers, principals, and other key stakeholders have access to complete and transparent information about school performance and progress on the State's accountability system. Under the ESEA, as amended by the ESSA, States have the opportunity to develop and implement accountability systems that take into account multiple indicators of school performance and progress, weighting these indicators as they choose, within certain guidelines set by the statute, in order to annually differentiate among all schools and identify certain schools for comprehensive or targeted support and improvement. While this allows for States to develop and implement accountability systems that reflect their unique State contexts and beliefs about how to hold schools accountable for improving student achievement and closing gaps, it also necessitates that States and LEAs inform parents, teachers, principals, and other key stakeholders about the key components of the accountability system and how they work together—and the results of such system for each school—to help ensure they can understand and meaningfully contribute to school improvement efforts.

The statute requires each State and LEA report card to describe certain elements of the accountability system, and proposed § 200.32(a) clarifies these elements in order to ensure they reflect the proposed regulations in §§ 200.13 through 200.24 and provide the public with a complete picture of how each required element works together in a coherent system of accountability, including the State's: Minimum n-size; long-term goals and measurements of interim progress; indicators and procedures for averaging data across years or grades; system for annual meaningful differentiation, including the weighting of each indicator and role of participation rates; methodology to identify schools for comprehensive or targeted support and improvement; and exit criteria for identified schools.

Proposed § 200.32(b) also would permit the State or LEA report card to link to the State plan or another location on the SEA's Web site for certain elements of the accountability system description. The Department recognizes that repeating this information on the report card may be burdensome and may also undermine the design of a concise report card. We also recognize that a detailed description of some of the accountability system elements may not add significantly to parents' or other stakeholders' understanding. For these reasons, we believe it is appropriate to allow the State or LEA to provide a Web address for, or direct link to, the State plan or another location on the SEA's Web site for detailed information on the accountability system description required under 1111(h)(1)(C)(i) (*e.g.,* the minimum number of students under proposed § 200.17). We encourage States in developing report cards to consider the amount of information needed to help parents and other stakeholders engage in and understand the State accountability system. For example, States may wish to indicate the minimum subgroup size on the report card because such information likely facilitates understanding of how school performance is measured, and then provide more detailed information on how the minimum subgroup size was determined in the State plan or another location on the SEA's Web site.

In addition to a description of the accountability system, proposed § 200.32(c) would require school-level accountability results to also be included on report cards. Because of the potential complexity of multi-indicator State accountability systems under the ESEA, as amended by the ESSA, information on a school's performance level on each of the individual indicators is critical for parents and stakeholders to understand school performance across multiple dimensions of success and the relationship of the performance on each indicator to how a school is ultimately identified in the State's accountability system. Further, knowing a school's single summative rating will be important for conveying a school's performance overall, in a way that reflects performance across the individual indicators. For these reasons, proposed § 200.32(c) would require each LEA report card to include each school's performance level on every indicator, as well as the summative rating.

In addition to reporting on the performance levels, proposed § 200.32(c) would require that State and LEA report cards include, along with the number and names of all schools identified for comprehensive or targeted support and improvement as required by statute, the particular reason for such identification, including, as applicable, any subgroup of students whose performance contributed to such identification. This information would help parents and the public better understand the quality of public schools in their communities and bolster the efforts of schools, districts, and States to target support, resources, and technical assistance to address specific needs of students and schools.

Section 200.33 Calculations for Reporting on Student Achievement and Meeting Measurements of Interim Progress

Statute: Section 1111(h)(1)(C)(ii) of the ESEA, as amended by the ESSA, requires State and LEA report cards to include information on student achievement on the academic assessments in reading/language arts, mathematics, and science described in section 1111(b)(2) at each level of achievement (as determined by the State under section 1111(b)(1)) for all students and disaggregated by each subgroup of students described in section 1111(b)(2)(B)(xi), homeless status, status as child in foster care, and status as a student with a parent who is a member of the Armed Forces (as defined in 10 U.S.C. 101(a)(4)) on active duty (as defined in 10 U.S.C. 101(d)(5)) Further, section 1111(h)(2)(C) of the ESEA, as amended by the ESSA, requires LEA report cards to include, for the LEA as a whole, information that shows the achievement on the academic assessments described in section 1111(b)(2) of students served by the LEA compared to students in the State as a whole and, for each school served by the LEA, corresponding information for the school's students compared to students served by the LEA and the State as a whole. Section 1111(h)(1)(C)(vi) of the ESEA, as amended by the ESSA, requires State and LEA report cards to include information on the progress of all students and each subgroup of students, as defined in section 1111(c)(2), toward meeting the State-designed long-term goals for academic achievement in reading/language arts and mathematics under section 1111(c)(4)(A), including the progress of all students and each subgroup of students against the State's measurements of interim progress established under such section. Section 1111(h)(1)(C)(vii) of the ESEA, as amended by the ESSA, requires State and LEA report cards to include, for all students and disaggregated by each subgroup of students described in section 1111(b)(2)(B)(xi), the percentage of students assessed and not assessed.

Current Regulations: None.

Proposed Regulations: Proposed § 200.33(a) would require State and LEA report cards to include the percentages of students performing at each level of achievement on the State's academic achievement standards, by grade, for all students and disaggregated for each subgroup of students, on the reading/language arts, mathematics, and science assessments described in section 1111(b)(2), using the following two calculation methods: (1) The method used in the State accountability system, as described in proposed § 200.15(b)(1), in which the denominator includes the greater of—

- 95 percent of all students and 95 percent of each subgroup of students who are enrolled in the school, LEA, or State, respectively; or
- the number of such students participating in these assessments;

and (2) a method in which the denominator includes all students with a valid test score. Proposed § 200.33(b) would also clarify the calculation method used for the statutory requirement that State and LEA report cards include an indication of whether all students and each subgroup of students described in proposed § 200.16(a)(2) met or did not meet the State's measurements of interim progress for academic achievement under proposed § 200.13(a). Under proposed § 200.33(b), the determination of whether all students and each subgroup of students met or did not meet these State measurements of interim progress (based on the percentage of students meeting or exceeding the State's proficient level of achievement) would be calculated using the method in proposed § 200.15(b)(1), in which the denominator includes the greater of—

- 95 percent of all students and 95 percent of each subgroup of students who are enrolled in the school, LEA, or State, respectively; or
- the number of all such students participating in these assessments.

Finally, proposed § 200.33(c) would clarify that, to meet the requirements under section 1111(h)(1)(C)(vii), State and LEA report cards would include information on the percentage of all students and each subgroup of students assessed and not assessed in reading/language arts, mathematics, and science based on a calculation method in which the denominator includes all students enrolled in the school, LEA, or State, respectively.

Reasons: Proposed § 200.33(a) is intended to ensure that parents, teachers, principals, and other key stakeholders have access to information about student academic achievement in schools, LEAs, and the State as a whole based on two calculation methods: (1) One consistent with the method of calculating student academic achievement for accountability purposes; and (2) one that reflects student achievement based only on students with a valid test score. Together, these two different methods would provide a more nuanced picture of school, LEA, and State performance on the assessments required under the ESEA, as amended by the ESSA. In addition, these two different methods would ensure consistency between information that is publicly reported on State and LEA report cards and information that is considered by the State in making school accountability determinations. Similarly, proposed § 200.33(b) would require the same method for determining whether or not all students and each student subgroup met or did not meet the State's measurements of interim progress for academic achievement as is used for measuring performance on the Academic Achievement indicator for accountability purposes (see proposed § 200.15(b)(1)), which will help create stronger alignment between the measurements of interim progress and long-term goals and the indicators that are based on those goals. Finally, in order for parents and the public to fully understand the numerous pieces of information on academic achievement reported on State and LEA report cards, the percentage of students assessed and not assessed must be clear. With accurate information on the percentage of students assessed in the school, LEA, and State as a whole, for all students and each subgroup of students, the public will be more likely to draw appropriate conclusions about the performance of schools, LEAs, and the State. Thus, proposed § 200.33(c) ensures such accuracy.

§ 200.34 High School Graduation Rate

Statute: Section 1111(h)(1)(C)(iii)(II) of the ESEA, as amended by the ESSA, requires a State and its LEAs to report four-year adjusted cohort graduation rates and, at the State's discretion, extended-year adjusted cohort graduation rates on State and LEA report cards. The adjusted cohort graduation rates must be reported in the aggregate for all students and disaggregated by subgroup at the school, LEA, and State levels.

Section 8101(23) and (25) of the ESEA, as amended by the ESSA, requires the State to use a specific definition and process for the calculation of the adjusted cohort graduation rate. This section specifies that the denominator must consist of students who form the original grade 9 cohort, adjusted by adding students into the cohort who join later and subtracting students who leave the cohort. The section further specifies that the numerator must consist of (1) students who earn a regular high school diploma within four years (or one or more additional years for any extended-year cohort), and (2) students with the most significant cognitive disabilities who are assessed using the alternate assessment aligned to alternate academic achievement standards and earn an alternate diploma defined by the State. This section specifies that the alternate diploma must be standards-based, aligned with State requirements for the regular high school diploma, and obtained within the time period for which the State ensures the availability of a free appropriate public education (FAPE) under section 612(a)(1) of the IDEA.

Section 8101(23) and (25) requires that the State obtain documentation to remove a student from the cohort, and specifies that a student can be removed from the cohort only if the student transfers out, emigrates to another country, transfers to a juvenile justice facility or prison, or is deceased. Further, this section requires that a student can be transferred out only if the student transfers to another school from which the student is expected to receive a regular high school diploma or to another educational program from which the student is expected to receive a regular high school diploma or alternate diploma that meets the statutory requirements. If there is no documentation for a student transferring out of the cohort, or if the student participates in a program that does not issue or provide credit toward diploma types that meet the requirements of this section, such a student must remain in the cohort.

Section 8101(23) and (25) outlines special rules for high schools starting after grade 9. It also includes special rules for small schools, which apply to section 1111(c)(4) and are not applicable to report card requirements under section 1111(h).

Finally, section 1111(c)(4)(F) of the ESEA, as amended by the ESSA, describes how States and LEAs must include students in the adjusted cohort graduation rate cohort if they have attended a school for less than half of the academic year and leave the school without earning a regular high school diploma, or alternate diploma for students with the most significant cognitive disabilities, and without transferring to a high school that grants such a diploma. The section allows the State to decide whether to include such a student in the adjusted cohort for the school where the student was enrolled for the greatest proportion of school days while enrolled in grades 9 through 12, or the school in which the student was most recently enrolled.

Current Regulations: Section 200.19(b)(1) of the title I regulations describes how to calculate an adjusted cohort graduation rate. This section defines the phrase "adjusted cohort" and describes the conditions under which students may be transferred into and out of the cohort, including how transfers must be documented and who cannot be removed from the cohort. It also defines "students graduating in four years" and "regular high school diploma." In addition, § 200.19(b)(1) allows States to propose to the Secretary one or more extended-year graduation rates.

Section 200.19(b)(2) allows States to use a transitional graduation rate prior to implementation of the adjusted cohort graduation rate. When calculating the transitional graduation rate, § 200.19 requires States to define "regular high school diploma" and "standard number of years" in the same manner they are defined for the purpose of calculating an adjusted cohort graduation rate, and does not allow dropouts to be included as transfers. Section 200.19(b)(3) requires States to set a single graduation rate goal and annual targets for all students and for each subgroup of students that reflect continuous and substantial improvement toward meeting or exceeding the goal. It further requires States to meet or exceed the graduation rate goal or target in order to meet AYP.

Section 200.19(b)(4) requires a State and its LEAs to report the four-year adjusted cohort graduation rate on annual report cards at the school, LEA, and State levels, in the aggregate and disaggregated by each subgroup of students. It also requires a State and its LEAs to report separately an extended-year graduation rate, if the State has adopted such a rate, beginning with the first year that the State calculates such a rate. Prior to the year in which the State implements the adjusted cohort graduation rate, this section requires the State to use its transitional rate.

Section 200.19(b)(5) describes the timelines for using the adjusted cohort graduation rate for AYP determinations, and the requirements for including graduation rates in making AYP determinations prior to the use of the adjusted cohort graduation rate. Section 200.19(b)(6) requires the State to update its Accountability Workbook with:

- Information about the State's transitional graduation rate and plan to transition to the adjusted cohort graduation rate;
- The State's goals and targets and the rationale for how they were established;
- Percentiles of its most recent graduation rates; and
- An explanation of how the State chooses to use its extended-year graduation rate (if applicable).

Section 200.19(b)(7) allows the State to request an extension from the Secretary if it cannot meet the requirements of the section and can submit satisfactory evidence demonstrating why it cannot meet the requirements.

Proposed Regulations: Proposed § 200.34 would revise and replace current regulations to align the regulations with the statutory requirements in sections 8101(23) and (25) and would clarify statutory requirements in section 1111(c)(4)(F) of the ESEA, as amended by the ESSA. In addition, proposed § 200.34(a) would clarify that, for high schools that start after grade 9, States must calculate and report a four-year adjusted cohort graduation rate based on a time period shorter than four years. Proposed § 200.34(b) would provide greater specificity as to when States can adjust the cohort by requiring that States remove students who transfer to a prison or juvenile facility from the denominator of the cohort only if such facility provides an educational program that culminates in a regular high school diploma or State-defined alternate diploma. Proposed § 200.34(c) would clarify that the term "regular high school diploma" does not include diplomas based solely on meeting individualized education program (IEP) goals that are not fully aligned with the State's grade-level academic content standards. Additionally, it would clarify that the definition of a student with significant cognitive disabilities is the same as defined in the proposed requirement in § 200.6(d)(1) that was subject to negotiated rulemaking under the ESSA and on which the negotiated rulemaking committee reached consensus. Additionally, proposed § 200.34(d) would limit the length of an extended-year adjusted cohort graduation rate to seven years. Proposed § 200.34(e) would require States to report four-year adjusted cohort graduation rates and, if adopted by the State, extended year graduation rates on time (*i.e.,* States would be prohibited from delaying the reporting of adjusted cohort graduation rates beyond the immediately following school year). It would further specify that States that offer State-defined alternative diplomas for students with the most significant cognitive disabilities within the time period that the State ensures the availability of a FAPE cannot delay reporting of the four-year adjusted cohort graduation rate and, if adopted by the State, extended year graduation rates. Instead, a State would be required to report on-time adjusted cohort graduation rates, and then annually update their adjusted cohort graduation rates for prior school years to include all qualifying students in the numerator. Finally, proposed § 200.34(f) would clarify statutory requirements in section 1111(c)(4)(F) of the ESEA, as amended by the ESSA with respect to reporting on the adjusted cohort graduation rate for students partially enrolled within a school year. It would specify that States can use either approach allowed by that section but must use the same approach across all LEAs.

Reasons: The current adjusted cohort graduation rate regulations in § 200.19(b) require a uniform and accurate measure of student graduation in order to hold schools, LEAs, and States accountable for increasing the number of students who graduate on time with a regular high school diploma and to provide accurate, consistent information to the public about the percentage of students graduating on time. Proposed § 200.34 would preserve existing regulatory language in order to reinforce the important progress made through the current regulations to make graduation rates a consistent and comparable measure of student success. Further, it would revise the current regulations to incorporate new statutory graduation rate requirements, including providing States a pathway to recognize graduation outcomes for students with the most significant cognitive disabilities.

Proposed § 200.34(a) would clarify statutory language to ensure that the adjusted cohort graduation rate is calculated as intended (*i.e.,* that high schools starting after grade 9 would have a graduate rate representing a time period that is shorter than 4 year), and would clarify that the State would calculate a rate based on the standard number of years for that particular school. By clarifying statutory language regarding when States may remove students from the cohort if they transfer to a prison or juvenile detention facility by specifying that such students should be treated in the same way as any other transfer, proposed § 200.34(b) would help ensure that this high-risk population of students would not disappear from a graduation cohort so that either the school or facility remains accountable for the students' graduation outcome. In clarifying the meaning of the term "regular high school diploma," proposed § 200.34(c) would exclude diplomas based solely on meeting IEP goals that are not fully aligned with the State's grade-level academic content standards. This reflects the definition of a "regular high school diploma" in section 8101(43) of the ESEA, as amended by the ESSA, which states that a regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential. Because IEPs goals are designed to meet the educational needs that result from a child's disability, a diploma based solely on meeting IEP goals that are not fully aligned with the State's grade-level academic content standards, is a "lesser credential" and is not equivalent to a regular high school diploma. Under ESSA, an alternate diploma must be standards-based and aligned with the State requirements for a regular high school diploma; therefore, the alternate diploma may not be based solely on meeting IEP goals that are not fully aligned with the State's grade-level academic content standards. The Department has not yet identified a State with an alternate diploma that meets the requirements in proposed § 200.34(c) that such diploma is fully aligned to the ESSA requirements for an alternate diploma for students with the most significant cognitive disabilities. The Department will work to assist States in developing alternate diploma requirements consistent with the definition in ESSA to ensure these students are held to high standards. Further, proposed § 200.34(d) would cap the extended-year rate calculation at seven years, because such a time period is consistent with the time period during which a State may ensure the availability of FAPE and is the longest extended-year rate that the Department has approved under the current regulations.

Additionally, proposed § 200.34(e) would ensure that families and other stakeholders have timely access to comparable adjusted cohort graduation rate information by requiring on-time reporting of four-year adjusted cohort graduation rates and, if adopted by the State, extended-year adjusted cohort graduation rates and specifying that States cannot lag reporting of graduation rates for report card purposes; they must provide the data for the immediately preceding school year. Proposed § 200.34(e) would also clarify reporting requirements related to the new statutory language allowing States to include students with the most significant cognitive disabilities that earn an alternate diploma within the time period in which a State ensures the availability of a FAPE. Proposed § 200.34 would not allow States to delay reporting until after the time period in which the State ensures the availability of a FAPE has ended. States would be required to report on all students in a timely manner, but could annually update their report cards to reflect students with the most significant cognitive disabilities graduating within the time period during which the State ensures the availability of a FAPE. This would ensure that States and LEAs will be basing decisions on the most recent data available and, as a result, that parents and other stakeholders have access to timely information on critical outcomes. In subsequent years, it also would allow a State and its LEAs to reflect graduation outcomes for students with the most significant cognitive disabilities who take longer to graduate by updating their graduation rates to additionally include those that graduated with an alternate diploma within the time period in which a State ensures the availability of a FAPE. Proposed § 200.34(e) would also maintain language from the current regulations requiring that States adopting extended-year graduation rates report them separately from their four-year rates to maintain transparent reporting on students who graduate from high school on time. Proposed § 200.34(f) would clarify the language related to partial enrollment to ensure that regardless of the approach used by the State, the information on the adjusted cohort graduation rate is comparable across districts.

Taken together, the requirements in proposed § 200.34 would generally promote increased consistency in graduation rate reporting and support States in implementing new statutory requirements related to reporting accurate and timely graduation rates. However, a number of commenters responding to the RFI expressed concern that States use different criteria for including students in certain subgroups when calculating the adjusted cohort graduation rate for inclusion on their State and LEA report cards. Accordingly, we are seeking comment on whether to regulate to standardize the criteria for including children with disabilities, English learners, children who are homeless, and children who are in foster care in their corresponding subgroups within the adjusted cohort graduation rate. For example, should a student's membership in the subgroup be determined only at the time when the student is enrolled in the cohort or should a student be included in the subgroup if the student is identified as a child with disabilities, English learner, homeless child, or child who is in foster care at any time during the cohort period? Should the criteria be standardized across subgroups, or should different criteria apply to different subgroups?

Section 200.35 Per-Pupil Expenditures

Statute: Section 1111(h)(1)(C)(x) and section 1111(h)(2)(C) of the ESEA, as amended by the ESSA, require a State and its LEAs to annually report on the State and LEA report cards the per-pupil expenditures of Federal, State, and local funds, including actual personnel expenditures and actual nonpersonnel expenditures of Federal, State, and local funds, disaggregated by source of funds, for each LEA and each school in the State for the preceding fiscal year.

Current Regulations: None.

Proposed Regulations: Proposed § 200.35 would implement the statutory provisions requiring a State and its LEAs to annually report per-pupil expenditures of Federal, State, and local funds on State and LEA report cards, disaggregated by source of funds. It would make clear that these provisions require States to develop a single, statewide procedure that LEAs must use to calculate and report LEA-level per-pupil expenditures of Federal, State, and local funds, and a separate single, statewide procedure that LEAs must use to calculate and report school-level per-pupil expenditures of Federal, State, and local funds. A State and its LEAs would also be required to provide on State and LEA report cards the Web address or URL of, or direct link to, a description of the uniform procedure for calculating per-pupil expenditures.

Proposed § 200.35 would also establish minimum requirements for the State and LEA per-pupil expenditure uniform procedure. Specifically, in calculating per-pupil expenditures, a State and its LEAs would be required to use current expenditures, include or exclude in the numerator certain types of expenditures consistent with existing Federal expenditure reporting requirements, and use an October 1 student membership count as the denominator. In addition, a State and its LEAs would be required to report per-pupil expenditures in total (*i.e.*, including all Federal, State, and local funds) and disaggregated by (1) Federal funds, and (2) State and local funds. For disaggregation purposes, proposed § 200.35 would require that title VII (Impact Aid) funds be included with State and local funds, rather than Federal funds. Lastly, proposed § 200.35 would also require a State and its LEAs to separately report the current LEA per-pupil expenditures not allocated to public schools in the State.

Reasons: Proposed § 200.35 is intended to clarify the statutory reporting requirements for per-pupil expenditures and help facilitate State and LEA compliance. Proposed § 200.35 would require the development of a single statewide approach for reporting LEA per-pupil expenditures and a single statewide approach for reporting per-pupil expenditure for schools, consistent with existing Federal expenditure reporting requirements. Developing such an approach would be economical for a State and its LEAs because it aligns with existing Federal expenditure reporting requirements, allowing for more efficient administration of new collection and reporting processes. Moreover, a statewide approach for calculating per-pupil expenditures increases public awareness and accountability for any funding disparities at the school level, because it allows for accurate comparisons of resource allocations across and within LEAs, increasing transparency around State and local budget decisions.

In addition, the proposed requirement to include title VII (Impact Aid) funds as State and local funds, rather than Federal funds, in disaggregated reporting is appropriate because these funds compensate LEAs for the fiscal impact of Federal activities by partially replacing revenues that LEAs do not receive due to the exemption of Federal property from local property taxes.

Overall, proposed § 200.35 would increase the likelihood that LEAs within a State will publicly report expenditure data in a manner that is informative, accurate, comparable, and timely. It would also ensure States and LEAs are able to accurately assess resource inequities, as described in proposed §§ 200.21, 200.22, and 200.23, and would provide the public with information needed to analyze differences in school spending so they are able to, if necessary, demand a more equitable approach to school spending. In addition, by requiring States and LEAs to report expenditure data for the preceding fiscal year no later than December 31, consistent with proposed §§ 200.30(e) and 200.31(e), stakeholder awareness of LEA budget decisions from the preceding fiscal year would increase, allowing for more informed budgetary decisions in the subsequent fiscal year.

Section 200.36 Postsecondary Enrollment

Statute: Section 1111(h)(1)(C)(xiii) of the ESEA, as amended by the ESSA, requires a State and its LEAs to report, where available and beginning with the report card prepared for 2017, rates of enrollment of high school graduates in the academic year immediately following graduation in programs of public postsecondary education in the State and, if data are available and to the extent practicable, in programs of private postsecondary education in the State or programs of postsecondary education outside the State. The postsecondary enrollment cohort rate must be reported in the aggregate and disaggregated by each subgroup under section 1111(c)(2) of the ESEA, as amended by the ESSA, for each high school in the State for the immediately preceding school year.

Current Regulations: None.

Proposed Regulations: Proposed § 200.36 would restate the statutory requirement that State and LEA report cards include information at the State, LEA, and school level about which students graduate from high school and enroll in programs of postsecondary education in the academic year immediately following the students' high school graduation. Proposed § 200.36 would specify that the term "program of postsecondary education" has the same meaning as the term "institution of higher education" under section 101(a) of the Higher Education Act of 1965, as amended (HEA). It also would specify, for the purpose of calculating the postsecondary enrollment cohort rate, that a State and its LEAs must use as the denominator the number of students who in the immediately preceding year graduated with a regular high school diploma or State-defined alternate diploma, as those terms are defined under proposed § 200.34. Consistent with the statutory requirement, proposed § 200.36 would require States and LEAs to report postsecondary enrollment information where the information is available for programs of public postsecondary education in the State, and if available and to the extent practicable, for programs of private postsecondary education in the State or programs of postsecondary education outside the State. It would specify that such information is available if the State is obtaining the information, or if it is obtainable, on a routine basis. In addition, States and LEAs that cannot meet the reporting requirement under proposed § 200.36 would be required to publish on their report cards the school year in which they expect to be able to report postsecondary enrollment information.

Reasons: Proposed § 200.36 would restate the requirements under the ESEA, as amended by the ESSA, with respect to reporting of postsecondary enrollment cohort rates. This would reinforce the emphasis on college and career readiness in the ESEA, as amended by the ESSA, by providing parents and other stakeholders with timely and comparable information about the ability of high schools to prepare students to enroll in postsecondary institutions.

By requiring States to define programs of postsecondary education using the definition in section 101(a) of the HEA, proposed § 200.36 would promote consistency in data reporting, which would allow users to compare outcomes across States, LEAs, and schools. Proposed § 200.36 would also help advance the Department's goals of raising awareness about the differences across States and LEAs in rates of enrollment in programs that are offered by accredited two-and four-year institutions by increasing the transparency of postsecondary outcomes.

Proposed § 200.36 would also clarify that the ESEA, as amended by the ESSA, requires that, in calculating a postsecondary education enrollment rate, the numerator include students who enroll in postsecondary education in the academic year immediately following their high school graduation, instead of within 16 months after receiving a high school diploma, as was the reporting requirement under the State Fiscal Stabilization Fund, a program authorized under the American Recovery and Reinvestment Act of 2009. Proposed § 200.36 would also require that the denominator include only students receiving a regular high school diploma or an alternate diploma (consistent with proposed § 200.34) in the immediately preceding school year. This is the easiest population for States to track, as it would already be a defined group for reporting on graduation rates. It is also the population of students for which high schools in the State are directly accountable in a given year. As such, outcomes for that student population are the most representative of how successfully public high schools have prepared them for postsecondary programs. Finally, by requiring a State to report information if it is routinely obtaining such information or if the information is obtainable to the State on a routine basis, we seek to ensure that as many States as possible make postsecondary education enrollment information publicly available. According to information from the Data Quality Campaign, 47 States can currently produce high school feedback reports, which are reports that provide information on a class of high school graduates and their postsecondary outcomes.[18] This indicates that most States will be able to meet the requirement to track postsecondary outcomes for some, if not all, students in a graduating class. States that could not meet the reporting requirement would be required to include on their report card the date by when they expect to be able to report the information. By requiring States unable to report the information to acknowledge this limitation publicly, proposed § 200.36 would encourage those States that are not currently able to meet the requirements under this proposed section to alter their reporting processes so they can obtain and make available this information.

Section 200.37 Educator Qualifications

Statute: Section 1111(h)(1)(C)(ix) of the ESEA, as amended by the ESSA, requires State and LEA report cards to include the professional qualifications of teachers, including information on the number and percentage of: (1) Inexperienced teachers, principals, and other school leaders; (2) teachers teaching with emergency or provisional credentials; and (3) teachers who are not teaching in the subject or field for which the teacher is certified or licensed. This section requires that the information be presented in the aggregate and disaggregated by high-poverty compared to low-poverty schools.

Current Regulations: None.

Proposed Regulations: Proposed § 200.37 would implement statutory requirements for reporting on educator qualifications in State and LEA report cards. In addition, proposed § 200.37 would require States to adopt a uniform statewide definition of the term "inexperienced" and the phrase "not teaching in the subject or field for which the teacher is certified or licensed." Proposed § 200.37 would also define "high poverty school" as a school in the top quartile of poverty in the State and "low poverty school" as a school in the bottom quartile of poverty in the State.

Reasons: Proposed § 200.37 is intended to ensure consistency and comparability within States with respect to reporting on the professional qualifications of teachers, principals, and other school leaders, both overall and disaggregated by high- and low-poverty schools. Because this information is disaggregated by high-poverty compared to low-poverty schools, it will be a key indicator of equitable access to non-novice, qualified teachers and school leaders in schools across the State. Ensuring that these terms have consistent meaning when reported will increase understanding of staffing needs in high-poverty and difficult-to-staff schools and will encourage States to target efforts to recruit, support, and retain excellent educators in these schools. To promote consistency, the Department has also proposed that a State use the same definitions of "inexperienced" and "not teaching in the subject or field for which the teacher is certified or licensed" that it adopts for reporting purposes to meet the proposed State plan requirements for educator equity in 299.18(c).

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[18] "State by State Analysis of High School Feedback Reports." Data Quality Campaign. 2013. *http://dataqualitycampaign.org/find-resources/state-by-state-analysis-of-high-school-feedback-reports/.*

Section 299.13 Overview of State Plan Requirements

Statute: In order to receive Federal funding, the ESEA, as amended by the ESSA, requires each State to submit plans or applications for the following formula grant programs: Part A of title I (Improving Basic Programs Operated by LEAs); part C of title I (Education of Migratory Children); part D of title I (Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk); part A of title II (Supporting Effective Instruction); part A of title III (English Language Acquisition, Language Enhancement, and Academic Advisement Act); part A of title IV (Student Support and Academic Enrichment Grants); part B of title IV (21st Century Community Learning Centers); and subpart 2 of part B of title V (Rural and Low-Income School program). Section 8302 of the ESEA, as amended by the ESSA, permits each SEA, in consultation with the Governor, to apply for program funds through the submission of a consolidated State plan or a consolidated State application.

Current Regulations: On May 22, 2002, the Department published in the **Federal Register** a notice of final requirements (2002 NFR) (67 FR 35967), announcing the final requirements for optional consolidated State applications submitted under section 9302 of the ESEA, as amended by NCLB. The 2002 NFR specified that States could elect to submit individual program State plans or a consolidated State application and outlined the process for submitting a consolidated State application. The 2002 NFR also described the public participation requirements for submitting a consolidated State application, the documentation requirements for demonstrating compliance with program requirements, and the authority for LEAs to receive funding by submitting a consolidated local plan to the SEA.

Proposed Regulations: Proposed § 299.13 would outline the general requirements for State plans authorized under the ESEA, as amended by the ESSA. The requirements in proposed § 299.13 would apply whether a State submits a consolidated State plan under proposed § 299.14 or an individual program State plan consistent with § 299.13. The proposed regulations would create new procedural requirements for submitting and revising a State plan, including proposed deadlines for submission and proposed consultation requirements. The proposed regulations would also codify and update the requirements in the 2002 NFR for optional State consolidated applications submitted under section 9302 of the ESEA, as amended by NCLB, in order to align with the final requirements in the ESEA, as amended by the ESSA.

Proposed § 299.13(b) would require SEAs to engage in timely and meaningful consultation, including notification and outreach requirements, with required stakeholders in the development of a consolidated State plan or individual program State plans. Specifically, proposed § 299.13(b) would require SEAs to engage stakeholders during the design and development of the State plan, following the completion of the State plan, and prior to the submission of any revisions or amendments to the State plan. Additionally, proposed § 299.13(b) would require an SEA to meet the requirements of section 8540 of the ESEA, as amended by the ESSA, regarding consultation with the Governor during the development of a consolidated State plan or individual title I or title II State plan and prior to submitting that State plan to the Secretary.

Proposed § 299.13(c) would describe the assurances all SEAs would submit to the Secretary in order to receive Federal funds whether submitting an individual program State plan or a consolidated State plan. In addition to the assurances required in section 8304 of the ESEA, as amended by the ESSA, proposed § 299.13(c) would specify that the SEA would need to meet new assurances that address the requirements in title I, part A regarding partial school enrollment consistent with proposed § 200.34(f) and transportation of children in foster care to their school of origin under section 1112(c)(5)(B); part A of title III regarding English learners; and subpart 2 of part b of title V regarding the Rural and Low-Income School Program.

Proposed § 299.13(d) would specify the process for submitting a consolidated State plan or an individual program State plan including the specific timelines for submission and requirements for periodic review of State plans that SEAs must follow. Proposed § 299.13(d)(2)(i) would clarify that the Secretary has the authority to establish a deadline for submission of a consolidated State plan or individual program State plan. Proposed § 299.13(d)(2)(ii) would clarify that an SEA's consolidated State plan or individual program State plan would be considered to be received by the Secretary for the purpose of making a determination under sections 1111(a)(4)(A)(v) or 8451 of the ESEA, as amended by the ESSA, on the deadline date established by the Secretary if it addresses all of the requirements in § 299.14 or all statutory and regulatory application requirements. Proposed § 299.13(d)(2)(iii) would require each SEA to submit either a consolidated State plan or an individual program State plan for all of the programs in proposed § 299.13(i) in a single submission. Proposed § 299.13(d)(3) would allow an SEA to request a two-year extension if it is unable to calculate and report the educator equity data outlined in proposed § 299.18(c)(3), which requires student-level data to be used in calculating disparities in access to certain types of teachers for students from low-income families and minority students, at the time it submits its initial consolidated State plan or title I, part A individual program State plan for approval.

Proposed § 299.13(e) would provide an SEA the opportunity to revise its initial consolidated State plan or its individual program State plan in response to a preliminary written determination by the Secretary. While the SEA revises its plan, the period for Secretarial review under sections 1111(a)(4)(A)(v) or 8451 of the ESEA, as amended by the ESSA, would be suspended. If an SEA failed to submit revisions to its plan within 45 days of receipt of the preliminary written determination, proposed § 299.13(e) clarifies that the Secretary would be able to issue a final written determination under sections 1111(a)(4)(A)(v) or 8451 of the ESEA, as amended by the ESSA.

Proposed § 299.13(f) would require each SEA to publish its approved consolidated State plan or its individual program State plans on the SEA's Web site. Proposed § 299.13(g) would require an SEA that makes a significant change to its State plan to submit an amendment to the Secretary for review and approval after engaging in timely and meaningful consultation as defined in proposed § 299.13(b). Proposed § 299.13(h) would also require each SEA to periodically review and revise its consolidated State plan or individual program State plans, at a minimum, every four years after engaging in timely and meaningful consultation. Each State would submit its State plan revisions to the Department.

In addition to the programs that may be included in a consolidated State plan under section 8002(11) of the ESEA, as amended by the ESSA, proposed § 299.13(j) would include two additional programs consistent with the Secretary's authority in section 8302 of the ESEA, as amended by the ESSA: Section 1201 of title I, part B (Grants for State Assessments and Related Activities) and the Education for Homeless Children and Youths program under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (McKinney-Vento).

Proposed § 299.13(k) would describe the requirements an SEA would have to meet if it chose to submit individual program State plans for one or more of the programs listed in proposed § 299.13(j) instead of including the program in a consolidated State plan. In doing so, an SEA would address all individual State plan or application requirements established in the ESEA, as amended by the ESSA for the individual programs not included in its consolidated State plan, including all required assurances and any applicable regulations. Additionally, the proposed regulations would require SEAs submitting individual program State plans to meet requirements described as part of the consolidated State plan in three places: (1) Proposed § 299.18(c) regarding educator equity when addressing section 1111(g)(1)(B) of the ESEA, as amended by the ESSA; (2) proposed § 299.19(c)(1) regarding the SEA's process and criteria for approving waivers of the 40-percent poverty threshold to operate schoolwide programs; and (3) proposed § 299.19(c)(3) regarding English learners when addressing section 3113(b)(2) of the ESEA, as amended by the ESSA.

Reasons: Proposed § 299.13 would establish the general requirements governing the development and submission of consolidated State plans and individual program State plans. Proposed § 299.13 is designed to ensure SEA compliance with the ESEA, as amended by the ESSA, by codifying existing requirements and providing additional clarification including with respect to consultation with stakeholders and parameters for the periodic review and revision of State plans. Proposed § 299.13(a) is necessary to establish the basic statutory framework for consolidated State plans and individual program State plans.

Section 299.13(b) proposes specific requirements to ensure timely and meaningful consultation with stakeholders when developing, revising, or amending a State plan. The proposed regulations would clarify that timely and meaningful consultation includes both notification and outreach. The proposed regulations align with the consultation, public review, and public comment requirements in sections 1111(a)(1), 1111(a)(5), 1111(a)(8), 1111(g), 1304(c), 2101(d), and 3113(d) of the ESEA, as amended by the ESSA. Specifically, the proposed regulations would require each SEA to engage stakeholders during the design and development of the State plan, prior to the submission of the initial State plan, and prior to the submission of any revisions or amendments to the State plan. The proposed regulations would require an SEA to conduct outreach at more than one stage of State plan development because stakeholders should have an opportunity to ensure that the concerns raised during public comment are adequately considered and addressed prior to submission of a consolidated State plan or individual program State plans. Proposed § 299.13(b)(4) also codifies the statutory requirements in section 8540 of the ESEA, as amended by the ESSA, regarding consultation with the Governor in order to ensure that the SEA includes the Governor's office during the development of and prior to the submission of its consolidated State plan or individual title I or title II State plan.

Proposed § 299.13(c) would require an SEA, whether submitting a consolidated State plan or an individual program State plan, to submit to the Secretary specific assurances for certain covered programs, in addition to those assurances described in section 8304 of the ESEA, as amended by the ESSA. These additional assurances are essential for clarifying the steps all SEAs would need to implement to successfully meet statutory requirements and ensure public transparency and protections for vulnerable student populations. Consistent with section 8304 of the ESEA, as amended by the ESSA, an SEA submitting a consolidated State plan would not have to submit the individual programmatic assurances included in the ESEA, as amended by the ESSA, for programs included in its consolidated State plan. However, consistent with proposed § 299.13(l), an SEA would be required to maintain documentation of compliance with all statutory requirements, including programmatic assurances whether submitting a consolidated State plan or an individual program State plan.

Proposed § 299.13(d)(2) would clarify that the Secretary will establish a deadline for submission of consolidated State plans or individual program State plans on a specific date and time. We intend to establish two deadlines by which each SEA would choose to submit either a consolidated State plan or individual program State plans: March 6 or July 5, 2017. Developing thoughtful State plans that consider stakeholder feedback in response to timely and meaningful consultation takes a substantial amount of time. Those States already engaging in timely and meaningful consultation and developing plans that align with the proposed requirements in § 299.14 and relevant program requirements included in the ESEA, as amended by the ESSA, would have the opportunity to submit plans in March. A second, later deadline in July 2017 would ensure that all States have sufficient time to develop thorough State plans that consider stakeholder feedback and meet the proposed requirements of § 299.14 or relevant program requirements, as applicable. The Secretary plans to request that SEAs file an optional notice of intent to submit indicating which of the two deadlines the SEA is planning towards in order to assist the Department in designing a high quality peer review process.

We recognize that some States may not have the ability to calculate and report the data outlined in proposed § 299.18(c)(3) related to educator equity. Proposed § 299.13(d)(3) would offer each State a one-time extension if it is unable to calculate and report the data outlined in proposed § 299.18(c)(3) at the student level at the time it submits its consolidated State plan or individual title I, part A program State plan for approval. We anticipate that the majority of States, including those that have received funds from the Department through the State Longitudinal Data System grant program, would not need to request such an extension.

Proposed § 299.13(e) would provide an SEA the opportunity to revise its initial consolidated State plan or its individual program State plan in response to a preliminary written determination by the Secretary regarding whether the State plan meets statutory and regulatory requirements based on comments from the required peer review process under sections 1111(a)(4) and 8451 of the ESEA, as amended by the ESSA. While the SEA revises its plan, the period of Secretarial review would be suspended. This would ensure an SEA has sufficient time to follow its process for review and revision prior to any final written determination by the Secretary under sections 1111(a)(4)(A)(v) or 8451 of the ESEA, as amended by the ESSA.

Proposed § 299.13(f) would require each SEA to publish its approved consolidated State plan or individual program State plans on the SEA's Web site. Section 1111(a)(5) of the ESEA, as amended by the ESSA, requires the Secretary to publish information regarding the approval of State plans on the Department's Web site to ensure transparency. Publication of the approved consolidated State plan or individual program State plans on each SEA's Web site will ensure that stakeholders have access to the valuable information in each SEA's State plan to ensure ongoing meaningful consultation with stakeholders regarding implementation of the ESEA, as amended by the ESSA.

Section 1111(a)(6)(B) of the ESEA, as amended by the ESSA, requires States to periodically review and revise State plans and submit revisions or amendments when there are significant changes to the plan. Under section 1111(a)(6)(B)(i), significant changes include the adoption of new challenging State academic standards, academic assessments or changes to its accountability system. Proposed § 299.13(g) would require an SEA to submit amendments to its State plan that reflect these changes in order to ensure transparency and compliance with statutory requirements. Consistent with section 1111(a)(6)(A)(ii) of the ESEA, as amended by the ESSA, proposed § 299.13(h) would require each SEA to periodically review all components and revise as necessary its consolidated State plan or individual program State plans, at a minimum, every four years, and submit its revisions to the Secretary. Four years is a reasonable time period because it will allow SEAs and LEAs sufficient time to implement strategies and activities outlined in its consolidated State plan or individual program State plans; collect and use data, including input from stakeholders to assess the quality of implementation; monitor SEA and LEA implementation; and continuously improve SEA and LEA strategies to ensure high-quality implementation of programs and activities under the ESEA, as amended by the ESSA. In addition, proposed § 299.13(b)(2)(iii), (g) and (h) would require a State to engage in timely and meaningful consultation prior to submitting any amendments or revisions to the Department. Soliciting stakeholder feedback on significant changes or revisions is necessary to improve implementation and ensure progress towards State and local goals. Finally, this amendment, review and submission process would ensure that each State and the Department have the most up to date State plan information ensuring transparency and compliance with statutory requirements.

Proposed § 299.13(j) would identify the programs that may be included in a consolidated State plan under section 8302 of the ESEA, as amended by the ESSA, including section 1201 of title I, part B (Grants for State Assessments and Related Activities) and the McKinney-Vento program. Consistent with the 2002 NFR, section 1201 of title I, part B of the ESEA, as amended by the ESSA (previously section 6111 of the ESEA, as amended by NCLB), directly relates to the goals of other covered programs in that it supports State efforts to build high-quality assessment systems that are essential for informing State accountability systems and the identification of needs for subgroups of students. Proposed § 299.13(j) also would include the McKinney-Vento program because it closely aligns with the title I, part D program that is included as a covered program. Both programs—McKinney-Vento and title I, part-D—serve particularly vulnerable populations and have similar program goals.

Proposed § 299.13(k) would require an SEA that chooses to submit an individual program State plan for title I, part A to also meet the State plan requirements for consolidated State plans in proposed § 299.18(c) related to educator equity and proposed § 299.19(c)(1) related to schoolwide waivers of the 40-percent poverty threshold. An SEA that chooses to submit an individual program State plan for title III, part A must meet the State plan requirements in proposed § 299.19(c)(3) related to English learners. It is essential for all State plans to address these requirements as they provide necessary clarifications for each SEA as it addresses new statutory requirements included in the ESEA, as amended by the ESSA. Additional rationales for those sections are included in § 299.18(c) and § 299.19(c)(3).

Consistent with the 2002 NFR, proposed § 299.13(l) would emphasize the requirement that each SEA must administer all programs in accordance with all applicable statutes, regulations, program plans, and applications, and maintain documentation of this compliance.

Sections 299.14 Through 299.19 Consolidated State Plans

Statute: Section 8302 of the ESEA, as amended by the ESSA, permits the Secretary to establish procedures and criteria under which, after consultation with the Governor, an SEA may submit a consolidated State plan or a consolidated State application in order to simplify the application requirements and reduce burden for SEAs. The Secretary must establish, for each covered program under section 8302 of the ESEA, as amended by the ESSA, and additional programs designated by the Secretary, the descriptions, information, assurances, and other material required to be included in a consolidated State plan or consolidated State application.

Current Regulations: The 2002 NFR outlines the requirements for a consolidated State application under section 9302 of the ESEA, as amended by NCLB.

Proposed Regulations: Proposed §§ 299.14 through 299.19 would outline the requirements for consolidated State plans authorized under section 8302 of the ESEA, as amended by the ESSA. These sections would identify those requirements that are essential for implementation of the included programs, and would eliminate duplication and streamline requirements across the included programs. Except as noted below, all of the requirements outlined in proposed §§ 299.14 through 299.19 are taken directly from the ESEA, as amended by the ESSA, and applicable regulations, including proposed regulations.

Proposed § 299.14 Requirements for the Consolidated State Plan

Proposed § 299.14(b) would establish the framework for a consolidated State plan. The Department has identified five overarching components and corresponding elements that cut across all of the included programs. Each SEA would address each component in its consolidated State plan. Within each component, each SEA would be required to provide descriptions, strategies, timelines, and funding sources, if applicable, related to implementation of the programs included in the consolidated State plan. The proposed components, as reflected in proposed §§ 299.15 through 299.19 are:

- Consultation and Coordination (proposed § 299.15);
- Challenging Academic Standards and Academic Assessments (proposed § 299.16);
- Accountability, Support, and Improvement for Schools (proposed § 299.17);
- Supporting Excellent Educators (proposed § 299.18); and
- Supporting All Students (proposed § 299.19).

Under proposed § 299.14(c), for all of the components, except Consultation and Coordination, each SEA would be required to provide a description, including strategies and timelines, of its system of performance management of implementation of State and LEA plans. This description would include the SEA's process for supporting the development, review, and approval of the activities in LEA plans; monitoring SEA and LEA implementation; continuously improving implementation; and the SEA's plan to provide differentiated technical assistance to LEAs and schools.

Proposed § 299.15: Consultation and Coordination

Proposed § 299.15 would combine requirements across all included programs for each SEA to engage in timely and meaningful consultation with relevant stakeholders, consistent with proposed § 299.13(b), and coordinate its plans across all programs under the ESEA, as amended by the ESSA, as well as other Federal programs such as the IDEA in order to ensure all children receive a fair, equitable, and high-quality education. SEAs that submit a consolidated State plan would address how they consulted with stakeholders for the following components of the consolidated State plan: Challenging Academic Standards and Assessments; Accountability, Support, and Improvement for Schools; Supporting Excellent Educators; and Supporting All Students.

Proposed § 299.16: Challenging Academic Standards and Academic Assessments

Proposed § 299.16 would outline the State plan requirements for challenging academic standards and academic assessments consistent with section 1111(b) of the ESEA, as amended by the ESSA. Proposed § 299.16(a) would include the requirements related to challenging State academic standards under section 1111(b)(1) of the ESEA, as amended by the ESSA. Specifically, this section would require each SEA to provide evidence demonstrating that: It has adopted challenging academic content standards and aligned academic achievement standards in the required subjects and grades; its alternate academic achievement standards for students with the most significant cognitive disabilities meet the requirements of section 1111(b)(1)(E) of the ESEA, as amended by the ESSA; and it has adopted English language proficiency standards consistent with the requirements of section 1111(b)(1)(F) of the ESEA, as amended by the ESSA. Proposed § 299.16(b) would require SEAs to describe how the State is meeting the requirements related to academic assessments under section 1111(b)(2) of the ESEA, as amended by the ESSA, and the proposed requirements in §§ 200.2 to 200.6 that were subject to negotiated rulemaking under the ESSA and on which the negotiated rulemaking committee reached consensus. Specifically, each SEA would identify the high-quality student academic assessments it is implementing in the required grades and subjects, including any alternate assessments aligned to alternate academic achievement standards for students with the most significant cognitive disabilities, the annual assessment of English proficiency for all English learners, any approved locally selected nationally recognized high school assessments consistent with § 200.3, and any assessments used under the exception for advanced middle school mathematics. Each SEA would not be required to submit information and evidence that is collected as part of the Department's assessment peer review process in its State plan. Each SEA would also meet the requirements related to assessments in languages other than English consistent with proposed § 200.6 and describe how it will ensure all students have the opportunity to take advanced coursework in mathematics consistent with proposed § 200.5. Finally, each SEA would provide a description of how they intend to use the formula grant funds awarded under section 1201 of the ESEA, as amended by the ESSA to support assessment and assessment-related activities. These activities may include ensuring that assessments are high-quality, result in actionable, objective information about students' knowledge and skills; time-limited; fair for all students and used to support equity; and fully transparent to students and parents.

Proposed § 299.17: Accountability, Support, and Improvement for Schools

Proposed § 299.17 would include the State plan requirements related to statewide accountability systems and school support and improvement activities consistent with the requirements in section 1111(c) and 1111(d) of the ESEA, as amended by the ESSA, and proposed §§ 200.12 through 200.24. Proposed § 299.17(a) would require each SEA to provide its State-determined long-term goals and measurements of interim progress for academic achievement, graduation rates, and English language proficiency under section 1111(c)(4)(A) of the ESEA, as amended by the ESSA, and proposed § 200.13. Consistent with section 1111(c) of the ESEA, as amended by the ESSA, and proposed §§ 200.12 through 200.20, proposed § 299.17(b) and (c) would require each SEA to describe its statewide accountability system that: Is based on challenging State academic standards for reading/language arts and mathematics; includes all indicators under proposed § 200.14 and meets the participation rate requirements under proposed § 200.15; meaningfully differentiates all public schools in the State on an annual basis under proposed § 200.18; and identifies schools for comprehensive and targeted support and improvement under proposed § 200.19.

Proposed § 299.17(d) would require each SEA to describe its State support and improvement activities for low-performing schools. Each SEA would describe how it will allocate funds consistent with the requirements under section 1003 of the ESEA, as amended by the ESSA, and proposed § 200.24, and the supports it is providing to LEAs with schools identified for comprehensive and targeted support and improvement under proposed §§ 200.21 through 200.23 in order to improve student academic achievement and school success. Proposed § 299.17(e) would require each SEA to describe its processes for approving, monitoring, and periodically reviewing LEA comprehensive support and improvement plans for identified schools consistent with section 1111(d)(1)(B) of the ESEA, as amended by the ESSA, and proposed § 200.21. Further, each SEA would describe additional activities to support continued improvement consistent with proposed § 200.23, including State review of resource allocation, technical assistance for LEAs with schools identified for comprehensive and targeted support and improvement, and additional State action to support LEA improvement.

Proposed § 299.18: Supporting Excellent Educators

Proposed § 299.18 would require each SEA to provide key descriptions, strategies, and funding sources outlining the State's approach to supporting excellent educators for all students. Proposed § 299.18(a) would require each SEA to describe its educator development, retention, and advancement systems consistent with the requirements in sections 2101 and 2102 of the ESEA, as amended by the ESSA. Further, in proposed § 299.18(b), each SEA would describe how it intends to use title II, part A funds, as well as funds from other included programs, to support State-level strategies to develop, retain, and advance excellent educators in order to improve student outcomes and increase teacher and leader effectiveness. Each SEA would also describe how it will work with LEAs in the State to develop or implement State or local teacher and principal or other school leader evaluation and support systems, and how it will improve educator preparation programs if it chooses to use funds from one or more of the programs included in its consolidated State plan for these purposes.

Proposed § 299.18(c) would clarify the steps for each State to take in order to meet the statutory requirement in section 1111(g)(1)(B) of the ESEA, as amended by the ESSA, that low-income students and minority students are not taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers. The definitions that would be required under proposed § 299.18(c)(2) ensure that calculations of disproportionality can be conducted and reported statewide using data that is similar across districts. Proposed § 299.18(c)(3) would clarify that the calculation required under proposed § 299.18(c)(1) must be conducted using student level data, subject to appropriate privacy protections. Proposed § 299.18(c)(4) and (5) would clarify the publishing and reporting expectations and specify that data on disproportionality must be reported annually to ensure transparency for parents and stakeholders regarding progress towards closing equity gaps. Proposed § 299.18(c)(6)(i) and (ii) would clarify the steps a State must take if it demonstrates under proposed § 299.18(c)(3) that low income or minority students enrolled in schools receiving funds under title I, part A of the ESEA, as amended by the ESSA, are taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers. These steps would include a description of the root cause analysis, including the level of disaggregation (*e.g.,* Statewide, between districts, within district, and within school), that identifies the factor or factors causing or contributing to the disproportionate rates and providing its strategies to eliminate the disproportionate rates. Proposed § 299.18(c)(7)(i) would clarify that an SEA may direct an LEA to use a portion of its title II, part A funds, consistent with allowable uses of those funds, to support LEAs' work to eliminate disproportionalities consistent with section 1111(g)(1)(B) of the ESEA, as amended by the ESSA. Proposed § 299.18(c)(7)(ii) would also clarify that an SEA may deny an LEA's application for title II, part A funds if an LEA fails to describe how it will address identified disproportionalities or fails to meet other local application requirements applicable to title II, part A.

Proposed § 299.19: Supporting All Students

Proposed § 299.19 would require each SEA to describe how it will ensure that all children have a significant opportunity to meet the State's challenging academic standards and attain a regular high school diploma. In proposed § 299.19(a)(1), each SEA would describe its strategies, rationale, timelines, and funding sources that address the continuum of a student's education from preschool through grade 12, equitable access to a well-rounded education and rigorous coursework, school conditions to support student learning, effective use of technology, parent and family engagement, and the accurate identification of English learners and children with disabilities. In developing these strategies, each SEA must consider the unique needs of all subgroups of students included in proposed § 299.19(a)(2)(i) and the information and data from a resource equity review as described in proposed § 299.19(a)(3), including the data that is collected and reported consistent with section 1111(h) of the ESEA, as amended by ESSA and proposed § 200.35 and § 200.37. Proposed § 299.19(a)(4) would require each SEA to describe how it will leverage title IV, part A and part B funds, along with other Federal funds, to support its State-level strategies described in proposed § 299.19(a)(1) and the process it will use to award subgrants authorized under included programs, as applicable.

In addition to the performance management and technical assistance requirements in proposed § 299.14(c), each SEA would describe how it uses the data described in proposed § 299.19(a)(3) to inform its review and approval of local applications for ESEA program funds.

Under proposed § 299.19(c), each SEA would be required to address essential program-specific requirements to ensure compliance with statutory requirements for particular programs included in the consolidated State plan. Proposed § 299.19(c)(1) would require each SEA to describe the process and criteria it will use under section 1114(a)(1)(B) of the Act to grant waivers of the 40-percent poverty threshold required to operate a schoolwide program. The Department is not proposing to limit State discretion to grant such waivers, but believes it is important that each State develop and implement a process for approving requested waivers of the 40-percent schoolwide program poverty threshold that is consistent with the purposes of a schoolwide program and that protects the interests of students most at risk of not meeting challenging State academic standards.

Proposed § 299.19(c)(3) includes the new requirement in section 3113(b)(2) of the ESEA, as amended by the ESSA, for each State to establish standardized statewide entrance and exit procedures for English learners under title III. The proposed regulations would clarify that this statutory provision requires State procedures for both entrance and exit of English learners to include uniform criteria that are applied statewide.

Reasons: Proposed §§ 299.14 through 299.19 would ensure that each SEA provides the descriptions, information, assurances, and other materials necessary for consideration of the consolidated State plan consistent with the ESEA, as amended by the ESSA, and applicable regulations. Consistent with the principles in the ESEA, as amended by the ESSA, consolidated State plans are intended to address requirements across included programs, rather than addressing specific requirements individually for each program, many of which overlap. The proposed regulations would significantly reduce burden on each SEA choosing to submit a consolidated State plan rather than individual program State plans for the included programs outlined in proposed § 299.13(i) by eliminating duplication and streamlining requirements. The proposed regulations aim to encourage each State to think comprehensively about implementation of the ESEA, as amended by the ESSA, and leverage funding across the included programs. Further, proposed §§ 299.14 through 299.19 would help remove "silos" between different funding streams and support collaboration and efficiency across multiple programs to ensure that all children have a significant opportunity to receive a fair, equitable, and high-quality education and that each SEA continues to close achievement gaps.

In developing the framework for the consolidated State plan outlined in proposed § 299.14, we seek to improve teaching and learning by encouraging greater cross-program coordination, planning, and service delivery; provide greater flexibility to State and local authorities through consolidated plans and reporting; and enhance the integration of programs under the ESEA, as amended by the ESSA, with State and local programs. The components outlined in proposed § 299.14(b) encompass the essential statutory programmatic requirements of the included programs under the ESEA, as amended by the ESSA, and represent the core goals of equity and excellence for all students.

The proposed Performance Management and Technical Assistance requirements in § 299.14(c) are grounded in the SEA's responsibilities to support the development of, review, and approval of LEA plans; monitor SEA and LEA implementation; continuously improve implementation; and provide technical assistance to support implementation across the included programs. Proposed § 299.14(c) would focus on how the SEA will coordinate planning, monitoring, and use of data and stakeholder feedback to improve State and local plans if they are not leading to satisfactory progress towards improved student outcomes. Further, each SEA would describe how it will provide technical assistance to LEAs and schools to support and improve implementation and build capacity to support sustained improvement in student outcomes.

The consultation requirements in proposed § 299.15(a) are essential to ensuring that each SEA solicits input in the development of each component of its consolidated State plan. These requirements are consistent with the requirements for timely and meaningful consultation under proposed § 299.13(b). In addition, by requiring each SEA to describe how it is coordinating across programs with respect to each of the components, proposed § 299.15(b) would help to ensure that each SEA is thinking holistically about implementation across all programs to close achievement gaps and support all children.

Proposed § 299.16 would require each SEA to demonstrate that it is meeting the requirements in the ESEA, as amended by the ESSA and to have challenging academic standards and a high-quality, annual statewide assessment system that includes all students. Such a system is essential to provide local leaders, educators, and parents with the information they need to identify the resources and supports that are necessary to help every student succeed and continue the work toward equity and closing achievement gaps among subgroups of historically underserved students by holding all students to the same high expectations. An SEA would not be required to submit information required under proposed § 299.16(a) and (b)(2) with its initial consolidated State plan because each SEA is required to submit such information as part of the separate peer review of State assessment systems.

The requirements in proposed § 299.17(a)–(c) would ensure accountability and support for all subgroups of students and all public schools consistent with the requirements for accountability systems in section 1111(c) of the ESEA, as amended by the ESSA, and the related regulations in proposed §§ 200.12 through 200.20. Proposed § 299.17(d) would require an SEA to describe how it will meet the statutory requirements outlined in sections 1003 and 1111(d) of the ESEA, as amended by the ESSA, and the related regulations proposed in §§ 200.21 through 200.24 related to school support and improvement. Finally, proposed § 299.17(e) would include specific performance management and technical assistance requirements consistent with proposed § 200.23. Please see proposed §§ 200.12 through 200.24 for a detailed discussion of the rationale of the proposed regulations.

Proposed § 299.18 would require each SEA to include key descriptions, strategies, and applicable funding sources to outline the State's approach to supporting excellent educators. These descriptions are necessary to provide stakeholders and the public with a complete understanding of each State's plan, coupled with the resources that each State intends to make available, for ensuring that educators have the necessary training, support, and advancement opportunities at each stage of their career to best support all subgroups of students and improve student outcomes. Proposed § 299.18(a) would require each SEA to describe its systems of educator development, retention, and advancement systems consistent with the requirements in sections 2101 and 2102 of the ESEA, as amended by the ESSA, and in doing so, would help to ensure that such systems are designed and implemented with the stakeholder awareness and input that will ultimately yield success in implementation. Proposed § 299.18(b) would support implementation of the systems described in proposed § 299.18(a) by requiring each SEA to describe how it intends to use title II, part A funds, as well as funds from other included programs, to fund strategies to support and develop excellent educators in order to improve student outcomes and increase teacher and leader effectiveness for all students. If it chooses to use funds from one or more of the programs included in its consolidated State plan for these purposes, each State would also describe how it will work with LEAs in the State to develop or implement State or local teacher and principal or other school leader evaluation and support systems and how it will improve educator preparation programs. For States and LEAs that elect to implement such systems, teacher and principal evaluation and support systems provide rich data that enable educators to improve throughout their career. Further, high-quality educator preparation programs are essential for ensuring that all educators have the skills they need to serve student populations with unique academic and non-academic needs.

Proposed § 299.18(c) would clarify the steps each State must take to meet the statutory requirement in section 1111(g)(1)(B) of the ESEA, as amended by the ESSA, that low-income students and minority students are not taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers. These requirements align with the work all States have been doing in recent years to develop and implement State Plans to Ensure Equitable Access to Excellent Educators (Educator Equity Plans). The definitions that would be required under proposed § 299.18(c)(2) ensure that calculations of disproportionality would be conducted and reported statewide using data that is similar across districts. The definitions must be different from each other and based on distinct criteria so that each provides useful information about educator equity and disproportionality rates. Proposed § 299.18(c)(3) would clarify that the calculations required under proposed § 299.18(c)(1) must be conducted using student level data, subject to appropriate privacy protections. Such transparency is critical to enable stakeholders and the public to understand how each State is meeting its statutory obligation under section 1111(g)(1)(B) of the ESEA, as amended by the ESSA. Student-level data are essential to illuminate within-school disproportionalities that a school-level analysis would necessarily obscure. Nevertheless, we recognize that not all States may be prepared to calculate these data at the student level by submission of their initial consolidated State plan; therefore, as described in proposed § 299.13(d)(3), we provide an opportunity for a one-time extension, if necessary. Proposed § 299.18(c)(4) and (5) would clarify the publishing and reporting expectations and timelines for updating the data calculations described in proposed § 299.18(c)(3) to ensure transparency and a continued focus on closing any equity gaps. Additionally, proposed § 299.18(c)(6) would list the steps that would be required if a State demonstrates that low-income or minority students are taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers, including conducting a root cause analysis, which is critical to help States identify the underlying causes or contributing factors of any disproportionalities that exist, and describing the strategies, timelines, and funding sources the State will use to eliminate the identified disproportionality. Disproportionality may exist at many different levels (*e.g.*, statewide, between districts, within districts, within schools), and the root cause analysis should disaggregate data sufficiently to identify the source(s) of the disproportionality. Finally, proposed § 299.18(c)(7) would clarify that an SEA may, in order to meet the requirements of section 1111(g)(1)(B) of the ESEA, as amended by the ESSA, direct an LEA to use a portion of its title II, part A funds to eliminate disproportionalities consistent with section 1111(g)(1)(B) and deny an LEA's application for title II, part A funds if an LEA fails to describe how it will address identified disproportionalities. Proposed § 299.18(c)(7) also clarifies the SEA's authority to deny an LEA's application if the LEA fails to meet other local application requirements applicable to title II, part A. Consistent with section 432 of the General Education Provisions Act, if an SEA were to deny an LEA's application, an LEA would be entitled to an appeal of that decision to the Secretary. This clarification is necessary to enable SEAs to ensure that LEAs have adequate resources available to address existing disproportionalities.

To encourage SEAs and LEAs to think comprehensively about how to implement strategies and interventions to improve student outcomes, proposed § 299.19 would focus on support for all students, rather than separately for individual subgroups of students under each included program in order to ensure all students meet the State's challenging academic standards and attain a regular high school diploma that will prepare them to succeed in college and careers. Each SEA would describe its strategies, timelines, and funding sources for each of the requirements included in proposed § 299.19(a)(1). Requiring a State to consider a student's education from preschool through grade 12 would support that State's efforts to ensure that all students, beginning at the earliest stage in their education and continuing through high school, have the opportunity to acquire the skills and abilities necessary to earn a high school diploma, which is critical to allow them to pursue postsecondary education or a career of their choosing. Because these skills and abilities increase over the course of a child's schooling, it is essential for States to consider equitable access across a student's educational experience, beginning in preschool and ensure that all subgroups of students have access to a well-rounded education, including accelerated and advanced coursework. Proposed § 299.19(a)(1)(iii) would emphasize school conditions for student learning consistent with the requirement in section 1111(g)(1)(C) of the ESEA, as amended by the ESSA, so all students have access to a safe and healthy learning environment. Each SEA would also describe strategies for the effective use of technology to improve academic achievement and digital literacy so all students have the skills they need to participate in the global economy. Finally, proposed § 299.19(a)(1)(v) and (vi) would require each State to include strategies for meaningful and active parent and family engagement in their children's education and ensure the accurate identification of English learners and children with disabilities.

When developing the strategies in § 299.19(a)(1), each State would be required to consider all dimensions of schooling, including both academic and nonacademic factors, for each subgroup of students and the data and information from its review of resource equity consistent with proposed § 299.19(a)(3). An SEA may describe strategies that address all or a portion of the subgroups of students, or specific strategies based on the unique needs of particular student groups. Proposed § 299.19(a)(3) would require each SEA to use information and data on resource equity that section 1111(h) of the ESEA, as amended by the ESSA and proposed § 200.35 and § 200.37, requires them to publically report. This will help each State identify inequities that may hinder a student's educational success at any point in terms of access to the well-rounded education necessary for them to meet the State's challenging academic standards and earn a high school diploma.

Proposed § 299.19(b) would require each SEA to describe how it will utilize the resource equity data and information in proposed § 299.19(a)(3) to inform the review and approval of LEA plans and technical assistance to LEAs. This review is essential to ensure that local plans meet the unique needs of each LEA and school and SEAs target technical assistance to those LEAs and schools most in need.

In developing the consolidated State plan, we recognized that a number of covered programs include specific statutory requirements that are unique and essential to the implementation and oversight of those programs. Therefore, proposed § 299.19(c) captures those requirements to ensure each SEA provides sufficient detail to award funds for title I, part A; title I, part C; title III, part A; title V, part B, subpart 2; and the McKinney-Vento Act to supplement the descriptions, strategies, and timelines it provides in its consolidated State plan. Regarding title I, part A, proposed 299.19(c)(1) would not limit State discretion to grant such waivers, but we believe it is important that each State develop and implement a process for approving requested waivers of the 40-percent schoolwide program poverty threshold that is consistent with the purposes of a schoolwide program and that protects the interests of students most at risk of not meeting challenging State academic standards. Regarding the title III entrance and exit procedures required by section 3113(b)(2) of the ESEA, as amended by the ESSA, proposed § 299.19(c)(3) would clarify that this statutory provision requires a State to set uniform procedures that include criteria for both entrance into and exit from the English learner subgroup that are applied statewide, and prohibits a "local option," which cannot be standardized and under which LEAs could have widely varying criteria. We consider this clarification essential so that each State will adopt uniform procedures that will increase transparency around how students are identified, ensure consistency within a State with respect to which students are identified as English learners, and promote better outcomes for English learners. Specifically, the proposed regulations would clarify that exit procedures must include objective, valid, and reliable criteria, including a score of proficient on the State's annual English language proficiency assessment, to ensure each State implements the statutory requirement regarding exit from the English learner subgroup and to ensure consistency with civil rights obligations for English learners.[19] Though performance on content assessments may be affected by a student's level of English language proficiency, content assessments are not valid and reliable measures of English language proficiency. Relying on content assessments may result in students being included in the English learner subgroup beyond the point when they are actually English learners, which may lead to negative academic outcomes for an individual student, and, if a student held in English learner status is denied the opportunity to meaningfully participate in the full curriculum, may constitute a civil rights violation. Thus, the proposed regulations would make it clear that scores on content assessments cannot be included as part of a State's exit criteria. Finally, to ensure consistency in reporting and accountability, the proposed regulations would clarify that the State's exit criteria must be applied to both the title I subgroup and title III services, such that a student who exits English learner status based on the statewide standardized exit criteria must be considered to have exited English learner status for both title I and title III purposes. The proposed regulations would provide broad parameters, but also retain the flexibility for each State to choose its specific entrance and exit procedures.

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[19] See, for example, U.S. Department of Education and U.S. Department of Justice joint Dear Colleague Letter, English Learner Students and Limited

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is an economically significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account, among other things and to the extent practicable, the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives such as user fees or marketable permits, to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We have assessed the potential costs and benefits of this regulatory action. The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently. Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, we have determined that the benefits would justify the costs.

The Department believes that the majority of the changes proposed in this regulatory action would not impose significant costs on States, LEAs, or other entities that participate in programs addressed by this regulatory action. For example, the proposed regulatory framework for State accountability systems, which primarily incorporates statutory requirements, closely parallels current State systems, which include long-term goals and measurements of interim progress; multiple indicators, including indicators of academic achievement, graduation rates, and other academic indicators selected by the State; annual differentiation of school performance; the identification of low-performing schools, and the implementation of improvement plans for identified schools. In addition, the proposed regulations, consistent with the requirements of the ESEA, as amended by the ESSA, provide considerable flexibility to States and LEAs in determining the specific approaches to meeting new requirements, including the rigor of long-term goals and measurements of interim progress, the timeline for meeting those goals, the selection and weighting of indicators of student and school progress, the criteria for identification of schools for improvement, and the development and implementation of improvement plans. For example, this flexibility allows States and LEAs to build on existing measures, systems, and interventions rather than creating new ones, and to determine the most cost-efficient and least burdensome means of meeting proposed regulatory requirements, instead of a standardized set of prescriptive requirements.

The proposed regulations also reflect certain statutory changes to the accountability systems and school improvement requirements of the ESEA, as amended by the ESSA, which would result in a significant reduction in costs and administrative burdens for States and LEAs. First, the current regulations, which are based on the core goal of ensuring 100 percent proficiency in reading and mathematics for all students and all subgroups, potentially result in the identification of the overwhelming majority of participating title I schools for improvement,

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English Proficient Parents, January 7, 2015. *www.ed.gov/ocr/letters/colleague-el-201501.pdf.*

corrective action, or restructuring. Such an outcome would produce unsustainable demands on State and local capacity to develop, fund, implement, and monitor school improvement plans and related school improvement supports. Indeed, it was the immediate prospect of this outcome that drove the development of, and rapid voluntary requests for, waivers of certain accountability and school improvement requirements under ESEA flexibility prior to enactment of the ESSA. The proposed accountability regulations instead would require, consistent with the requirements of the ESEA, as amended by the ESSA, more flexible, targeted systems of differentiated accountability and school improvement focused on the lowest-performing schools in each State, including the bottom five percent of schools based on the performance of all students, as well as other schools identified for consistently underperforming subgroups. Based on the experience of ESEA flexibility, the Department estimates that States would identify a total of 10,000–15,000 schools for school improvement—of which the Department estimates 4,000 will be identified for comprehensive support and improvement—nationwide under the proposed regulations, compared with as many as 50,000 under the current regulations in the absence of waivers. While the costs of carrying out required school improvement activities under the current regulations varies considerably across schools, LEAs, and States depending on a combination of factors, including the stage of improvement and locally selected interventions, it is clear that the proposed regulations would dramatically decrease potential school improvement burdens for all States and LEAs.

Second, under the proposed regulations, LEAs also would not be required to make available SES to students from low-income families who attend schools identified for improvement. This means that States would not be required to develop and maintain lists of approved SES providers, review provider performance, monitor LEA implementation of SES requirements, or set aside substantial amounts of title I, part A funding for SES. States and LEAs also would no longer be required to report on either student participation or expenditures related to public school choice or SES. While States participating in ESEA flexibility generally already have benefited from waivers of the statutory and regulatory requirements related to public school choice and SES, the proposed regulations would extend this relief to all States and LEAs without the additional burden of seeking waivers.

Third, the proposed regulations would eliminate requirements for State identification of LEAs for improvement and the development and implementation of LEA improvement and corrective action plans. As would be the case for schools, the current regulations would require such plans for virtually all participating title I LEAs; the proposed regulations would no longer require identification of LEAs for improvement and related actions.

While most of the elements and requirements of State accountability systems required by the proposed regulations involve minimal or even significantly reduced costs compared to the requirements of the current regulations, there are certain proposed changes that could entail additional costs, as described below.

Goals and Indicators

Proposed § 200.13 would require States to establish a uniform procedure for setting long-term goals and measurements of interim progress for English learners that can be applied consistently and equitably to all students and schools for accountability purposes and that consider individual student characteristics (*e.g.*, grade level, English language proficiency level) in determining the most appropriate timeline and goals for attaining English language proficiency for each English learner. We estimate that each State would, on average, require 80 hours of staff time to develop the required uniform procedure. Assuming a cost of $40 per hour for State staff, the proposed regulation would result in a one-time cost, across 50 states, the District of Columbia, and Puerto Rico would be $166,400. We believe that the development of a uniform, statewide procedure would minimize additional costs and administrative burdens at the LEA level, and that any additional modest costs would be outweighed by the benefits of the proposed regulation, which would allow differentiation of goals for an individual English learner based on his or her language and educational background, thereby recognizing the varied needs of the English learner population. Setting the same long-term goals and measurements of interim progress for all English learners in the State would fail to account for these differences in the English learner population and would result in goals that are inappropriate for at least some students and schools.

Proposed § 200.14(b)(5) would require States to develop at least one indicator of School Quality or Student Success that measures such factors as student access to and completion of advanced coursework, postsecondary readiness, school climate and safety, student engagement, educator engagement, or any other measure the State chooses. Proposed § 200.14(c) would specify that measures within School Quality and Student Success indicators must, among other requirements, be valid, reliable, and comparable across all LEAs in the State and support meaningful differentiation of performance among schools. We recognize that the development and implementation of new School Quality and Student Success indicators, which may include the development of instruments to collect and report data on one or more such measures, could impose significant additional costs on a State that elects to develop an entirely new measure. However, the Department also believes, based in part on its experience in reviewing waiver requests under ESEA flexibility, that all States currently collect data on one or more measures that may be suitable as a measure of school quality and student success consistent with the requirements of proposed § 200.14(b)(5). Consequently, we believe that all, or nearly all, States will choose to adapt a current measure to the purposes of proposed § 200.14(b)(5), rather than developing an entirely new measure, and thus that the proposed regulation would not impose significant new costs or administrative burdens on States and LEAs.

Participation Rate

Proposed § 200.15(c)(2) would require an LEA with a significant number of schools that fail to assess at least 95 percent of all students or 95 percent of students in any subgroup to develop and implement an improvement plan that includes support for school-level plans to improve participation rates that must be developed under proposed § 200.15(c)(1). Proposed § 200.15(c)(2) would further require States to review and approve these LEA plans.

These proposed requirements are similar to current regulations that require States to: Annually review the progress of each LEA in making AYP; identify for improvement any LEA that fails to make AYP for two consecutive years, including any LEA that fails to make AYP as a result of not assessing 95 percent of all students or each subgroup of students; and provide technical assistance and other support related to the development and implementation of LEA improvement plans. Current regulations also require States to take certain corrective actions in LEAs that miss AYP for four or more consecutive years, including LEAs that miss AYP due to not assessing 95 percent of all students or each subgroup of students. As noted previously, the proposed regulations would no longer require annual State review of LEA progress; State identification of LEAs for improvement; or the development, preparation, or implementation of LEA improvement or corrective action plans. This significant reduction in State burden more than offsets the proposed regulations related to reviewing and approving LEA plans to address low assessment participation rates in their schools. In addition, State discretion to define the threshold for "a significant number of schools" that would trigger the requirement for LEA plans related to missing the 95 percent participation rate would provide States a measure of control over the burden of complying with the proposed regulations. Consequently, the Department believes that the proposed regulations would not increase costs or administrative burdens significantly for States, as compared to the current regulations. Moreover, we believe that these proposed requirements would have the significant benefit of helping to ensure that the plans include effective interventions that will improve participation in assessments, facilitate transparent information for families and educators on student progress, and assist schools in supporting high-quality instruction and meeting the demonstrated educational needs of all students.

School Improvement Process

The school improvement requirements proposed in this regulatory action generally are similar to those required under the current regulations. The current regulations require identification of schools for multiple improvement categories, State and LEA notification of identified schools, the development and implementation of improvement plans with stakeholder involvement, State support for implementation of improvement plans, LEA provision of public school choice and SES options (the latter of which also imposes significant administrative burdens on States), and more rigorous actions for schools that do not improve over time. However, the current regulations include a prescriptive timeline under which schools that do not improve must advance to the next stage of improvement, typically only after a year or two of implementation at the previous stage (*e.g.*, a school is given only one year for corrective action to prove successful before advancing to restructuring). The current regulations also do not consistently allow for a planning year prior to implementation of the required improvement plans. The proposed regulations, consistent with the statute, would provide more flexibility around the timeline for identifying schools (*e.g.*, once every three years for comprehensive support and improvement schools), up to a full year to develop comprehensive support and improvement and targeted support and improvement plans, and more time for full and effective implementation of improvement plans based on State- and LEA-determined timelines for meeting improvement benchmarks. The proposed regulations also would eliminate the public school choice and SES requirements, which impose substantial administrative costs and burdens on LEAs that are not directly related to turning around low-performing schools. We believe that the proposed regulations would thus significantly reduce the administrative burdens and costs imposed by key school improvement requirements in the current regulations.

The proposed regulations would clarify certain elements of the school improvement process required by the ESEA, as amended by the ESSA, including the needs assessment for schools identified for comprehensive support and improvement, the use of evidence-based interventions in schools identified for both comprehensive support and improvement and targeted support and improvement, and the review of resource inequities required for schools identified for comprehensive support and improvement as well as for schools identified for additional targeted support and improvement under proposed § 200.19(b)(2). Proposed § 200.21 would require an LEA with such a school to carry out, in partnership with stakeholders, a comprehensive needs assessment that takes into account, at a minimum, the school's performance on all indicators used by the State's accountability system and the reason(s) the school was identified. The proposed regulations also would require the LEA to develop a comprehensive support and improvement plan that is based on the needs assessment and that includes one or more evidence-based interventions. These proposed requirements are similar to the requirements in the current regulations, under which LEAs with schools identified for improvement must develop improvement plans that include consultation with stakeholders. Thus we believe that the proposed regulations related to conducting a needs assessment and the use of evidence-based interventions would not increase costs or administrative burdens significantly for LEAs, as compared to the current regulations. Moreover, we believe that these proposed requirements would have the significant benefit of helping to ensure that the required improvement plans include effective interventions that meet the demonstrated educational needs of students in identified schools, and ultimately could improve outcomes for those students.

Proposed § 200.21 also would require LEAs with schools identified for comprehensive support and improvement, as well as schools identified for additional targeted support and improvement under proposed § 200.19(b)(2), to identify and address resource inequities, including any disproportionate assignment of ineffective, out-of-field, or inexperienced teachers and possible inequities related to the per-pupil expenditures of Federal, State, and local funds. While this is not a new requirement, it would involve an additional use of data and methods that LEAs would be required to develop and apply to meet other requirements in the proposed regulations, including requirements related to ensuring that low-income and minority students are not taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers, the inclusion of per-pupil expenditure data on State and LEA report cards, and the use of per-pupil expenditure data to meet the title I supplement not supplant requirement. In addition, the proposed regulations would not specify how an LEA must address any resource inequities identified through its review. We believe it is critically important to ensure equitable access to effective teachers, and that the fair and equitable allocation of other educational resources is essential to ensuring that all students, particularly the low-achieving, disadvantaged, and minority students who are the focus of ESEA programs, have equitable access to the full range of courses, instructional materials, educational technology, and programs that help ensure positive educational outcomes.[20] Consequently, we believe that the benefits of the required review of resource inequities outweigh the minimal additional costs that may be imposed by the proposed regulation.

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[20] See, for example, U.S. Department of Education, Office for Civil Rights Dear Colleague Letter, Resource Comparability, October 1, 2014. *http://www.ed.gov/ocr/letters/colleague-resourcecomp-201410.pdf.*

Proposed § 200.21 would establish a new requirement for State review and approval of each comprehensive support and improvement plan developed by LEAs with one or more schools identified for comprehensive support and improvement, as well as proposed amendments to previously approved plans. This proposed requirement would potentially impose additional costs compared to the requirements in the current regulations. The Department estimates that States would identify approximately 4,000 schools for comprehensive support and improvement under the proposed regulations, and that it would take, on average, 20 hours for a State to review and approve each LEA comprehensive support and improvement plan, including any necessary revisions to an initial plan. Assuming a cost of $40 per hour for State staff, the proposed review and approval process would cost an estimated total of $3,200,000. Over the course of the four-year authorization of the law, this cost is expected to be incurred twice. We note that under the proposed regulations, States would incur these costs once every three years, when they identify schools for comprehensive support and improvement. We also note that this cost represents less than 2 percent of the funds that States are authorized to reserve annually for State-level administrative and school improvement activities under part A of title I of the ESEA, as amended by the ESSA. Given the critical importance of ensuring that LEAs implement rigorous improvement plans in their lowest-performing comprehensive support and improvement schools, and that a significant proportion of the approximately $1 billion that States will reserve annually under section 1003 of the ESEA, as amended by the ESSA, will be used to support effective implementation of these plans, we believe that the potential benefits of State review and approval of comprehensive support and improvement plans would far outweigh the costs. Moreover, those costs would be fully paid for with formula grant funds made available through the ESEA, as amended by the ESSA, including the 1 percent administrative reservation under title I, part A and the 5 percent State-level share of section 1003 school improvement funds.

The proposed regulations also would require that the State monitor and periodically review each LEA's implementation of approved comprehensive support and improvement plans. We believe that this proposed requirement is essentially the same as the current requirement for States to ensure that LEAs carry out their school improvement responsibilities related to schools identified for improvement, corrective action, and restructuring, as well as State-level monitoring requirements under the School Improvement Grants program. In addition, section 1003 of the ESEA, as amended by the ESSA, which requires States to reserve a total of approximately $1 billion annually to support implementation of comprehensive support and improvement and targeted support and improvement plans, permits States to use up to 5 percent of these funds for State-level activities, including "monitoring and evaluating the use of funds" by LEAs using such funds for comprehensive support and improvement plans. For these reasons, we believe that the proposed requirement to monitor and periodically review each LEA's implementation of approved comprehensive support and improvement plans would impose few, if any, additional costs compared to current regulatory requirements, and that any increased costs would be paid for with Federal funding provided for this purpose.

States also would be required to establish exit criteria for schools implementing comprehensive support and improvement plans and for certain schools identified for additional targeted support under proposed § 200.19(b)(2) and implementing enhanced targeted support and improvement plans. In both cases, the proposed regulations would require that the exit criteria established by the State ensure that a school (1) has improved student outcomes and (2) no longer meets the criteria for identification. Schools that do not meet exit criteria following a State-determined number of years would be identified for additional improvement actions (as outlined by an amended comprehensive support and improvement plan for schools already implementing such plans, and a comprehensive support and improvement plan for schools previously identified for additional targeted support). We believe that the proposed requirement for States to establish exit criteria for schools implementing comprehensive support and improvement plans, as well as additional targeted support plans, would be minimally burdensome and entail few, if any, additional costs for States. Moreover, most States already have developed similar exit criteria for their priority and focus schools under ESEA flexibility, and would be able to easily adapt existing criteria for use under the proposed regulations. Rigorous exit criteria linked to additional improvement actions are essential for ensuring that low-performing schools, and, more importantly, the students who attend them, do not continue to underperform for years without meaningful and effective interventions. Moreover, the additional improvement actions primarily involve revision of existing improvement plans, which would be less burdensome, for example, than moving from corrective action to restructuring under current regulations, which requires the creation of an entirely new plan involving significantly different interventions. For these reasons, we believe that the benefits of the proposed regulations would outweigh the minimal costs.

In addition to requiring States to review and approve comprehensive support and improvement plans, monitor implementation of those plans, and establish exit criteria, the proposed regulations would require States to provide technical assistance and other support to LEAs serving a significant number of schools identified either for comprehensive support and improvement or targeted support and improvement.

Proposed § 200.23 would require each State to review resource allocations periodically between LEAs and between schools. The proposed regulations also would require each State to take action, to the extent practicable, to address any resource inequities identified during its review. These reviews would not require the collection of new data and, in many cases, would likely involve re-examining information and analyses provided to States by LEAs during the process of reviewing and approving comprehensive support and improvement plans and meeting title I requirements regarding disproportionate assignment of low-income and minority students to ineffective, out-of-field, or inexperienced teachers. In addition, the proposed regulations would give States flexibility to identify the LEAs targeted for resource allocation reviews. Consequently, we believe that the proposed regulations regarding State resource allocation reviews would be minimally burdensome and entail few if any new costs, while contributing to the development of statewide strategies for addressing resource inequities that can help improve outcomes for students served under ESEA programs.

Similarly, proposed § 200.23(b) would require each State to describe in its State plan the technical assistance it will provide to each of its LEAs serving a significant number of schools identified for either comprehensive support and improvement or targeted support and improvement. The proposed regulations would also specify minimum requirements for such technical assistance, including a requirement that the State describe how it will assist LEAs in developing and implementing comprehensive support and improvement plans and targeted support and improvement plans, conducting school-level needs assessments, selecting evidence-based interventions, and reviewing and addressing resource inequities. We believe that the proposed regulations related to State-provided technical assistance to certain LEAs would be better differentiated, more reflective of State capacity limits, and significantly less burdensome and costly than current regulatory requirements related to LEA improvement and corrective action and the operation of statewide systems of support for schools and LEAs identified for improvement. Moreover, given the schools that would be targeted for technical assistance, most costs could be paid for with the State share of funds reserved for school improvement under section 1003 of the ESEA, as amended by the ESSA.

Data Reporting

The ESEA, as amended by the ESSA, expanded reporting requirements for States and LEAs in order to provide parents, practitioners, policy makers, and public officials at the Federal, State, and local levels with actionable data and information on key aspects of our education system and the students served by that system, but in particular those students served by ESEA programs. The proposed regulations would implement these requirements primarily by clarifying definitions and, where possible, streamlining and simplifying reporting requirements consistent with the purposes of the ESEA. Although the proposed regulatory changes in §§ 200.30 through 200.37 involve new requirements that entail additional costs for States and LEAs, we believe the costs are reasonable in view of the potential benefits, which include a more comprehensive picture of the structure and performance of our education system under the new law. Importantly, the ESEA, as amended by the ESSA, gives States and LEAs considerable new flexibility to develop and implement innovative, evidence-based approaches to addressing local educational needs, and the proposed regulations would help ensure that the comprehensive data reporting requirements of the ESEA, as amended by the ESSA, capture the shape and results of that innovation without imposing unreasonable burdens on program participants.

The Department estimates that, to meet new data reporting requirements in the proposed regulations, it would impose a one-time increased burden of 230 hours per State. Assuming an average cost of $40 an hour for State staff, we estimate a total one-time cost of $478,400 for meeting the new State report card requirements. The Department further estimates that the preparation and dissemination of LEA report cards would require a new one-time burden of 80 hours per respondent in the first year and annual burden of 10 hours per respondent, resulting in a one-time total burden across 16,970 LEAs of 1,357,600 hours and annual burden of 169,700 hours per LEA.[21] Assuming an average cost of $35 an hour for LEA staff, we estimate the one-time total cost to be $47,516,000 and a total annual cost of $5,939,500. The annual burden on LEAs for creating and publishing their report cards would remained unchanged at 16 hours per LEA, posing no additional costs relative to the costs associated with the current statutory and regulatory requirements. The Department believes these additional costs are reasonable for collecting essential information regarding the students, teachers, schools, and LEAs served through Federal programs authorized by the ESEA, as amended by the ESSA, that currently award more than $23 billion annually to States and LEAs.

A key challenge faced by States in meeting current report card requirements has been developing clear, effective formats for the timely delivery of complex information to a wide range of customers. Proposed §§ 200.30 and 200.31 specifies requirements intended to promote improvements in this area, including a required overview aimed at ensuring essential information is provided to parents in a manageable, easy-to-understand format; definitions for key elements; dissemination options; accessible formats; and deadlines for publication. We believe the benefits of this proposed regulation are significant and include transparency, timeliness, and wide accessibility of data to inform educational improvement and accountability.

Proposed § 200.32 would streamline reporting requirements related to State and local accountability systems by permitting States and LEAs to meet those requirements by referencing or obtaining data from other existing documents and descriptions created to meet other requirements in the proposed regulations. For example, proposed § 200.32 would allow States and LEAs to meet the requirement relating to a description of State accountability systems through a link to a Web address, rather than trying to condense a complex, lengthy description of a statewide accountability system into an accessible, easy-to-understand "report card" format. Proposed § 200.33 would clarify calculations and reporting of data on student achievement and other measures of progress, primarily through modifications to existing measures and calculations. These proposed changes would help ensure that State and local report cards serve their intended purpose of providing the public with information on a variety of measures in a State's accountability system that conveys a complete picture of school, LEA, and State performance. The proposed regulations would have a key benefit of requiring all LEA report cards to include results from all State accountability system indicators for all schools served by the LEA to ensure that parents, teachers, and other key stakeholders have access to the information for which schools are held accountable.

A critical new requirement in the ESEA, as amended by the ESSA, is the collection and reporting of per-pupil expenditures. Proposed § 200.35 includes requirements and definitions aimed at helping States and LEAs collect and report reliable, accurate, comparable data on these expenditures. We believe that these data will be essential in helping districts meet their obligations under the supplement, not supplant requirement in Title I–A, which requires districts to develop a methodology demonstrating that federal funds are used to supplement state and local education funding. In addition, making such data widely available has tremendous potential to highlight disparities in resource allocations that can have a significant impact on both the effective use of Federal program funds and educational opportunity and outcomes for the students served by ESEA programs. Broader knowledge and understanding of such disparities among educators, parents, and the public can lead to a more informed debate about how to improve the performance of our education system, and the ESEA, as amended by the ESSA, highlights the importance of resource allocation considerations by making them a key component of school improvement plans.

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[21] 16,790 is, according to NCES data, the total number of operating school districts of all types, except supervisory unions and regional education service agencies; including these types would result in double-counting. We note that the number of LEAs fluctuates annually.

Proposed § 200.36 would provide specifications for the newly required collection of information on student enrollment in postsecondary education, including definitions of key data elements. Proposed §§ 200.34 and 200.37 would clarify guidelines for calculating graduation rates and reporting on educator qualifications, respectively, and reflect a change to existing reporting requirements in current regulations rather than new items (*e.g.* requirements related to the reporting of highly-qualified teachers, a term that no longer exists in the ESEA, as amended by ESSA).

Optional Consolidated State Plans

We believe that the proposed State plan regulations in §§ 299.13 to 299.19 generally would not impose significant costs on States. As discussed in the *Paperwork Reduction Act of 1995* section of this document, we estimate that States would need on average 1,200 additional hours to carry out the requirements in the proposed State plan regulations. At $40 per hour, the average additional State cost associated with these requirements would accordingly be an estimated $48,000, resulting in a total cost across 52 States of $2,496,000. We expect that States would generally use the Federal education program funds they reserve for State administration to cover these costs, and that any costs not met with Federal funds would generally be minimal.

Moreover, the proposed regulations would implement statutory provisions expressly intended to reduce burden on States by simplifying the process for applying for Federal education program funds. Section 8302 of the ESEA, as amended by the ESSA, allows States to submit a consolidated State plan in lieu of multiple State plans for individual covered programs. The Department anticipates, based on previous experience, that all States will take advantage of the option in proposed § 299.13 to submit a consolidated State plan, and we believe that the content areas and requirements proposed for those plans in §§ 299.14 to 299.19 are appropriately limited to those needed to ensure that States and their LEAs provide all children significant opportunity to receive a fair, equitable, and high-quality education and close achievement gaps, consistent with the purpose of title I of the ESEA, as amended by the ESSA.

As discussed elsewhere in this document, section 8302(a)(1) of the ESEA, as amended by the ESSA, permits the Department to designate programs for inclusion in consolidated State plans in addition to those covered by the statute. In § 299.13, the Department proposes adding to the covered programs the Grants for State Assessments and Related Activities in section 1201 of title I, part B of the ESEA, as amended by the ESSA, and the Education for Homeless Children and Youths program in subpart B of title VII of the McKinney-Vento Act. Inclusion of these programs in a consolidated State plan would further reduce the burden on States in applying for Federal education program funds.

In general, the Department believes that the costs of the proposed State plan regulations (which are discussed in more detail in the following paragraphs) are clearly outweighed by their benefits, which include, in addition to reduced burden on States: Increased flexibility in State planning, improved stakeholder engagement in plan development and implementation, better coordination in the use of Federal education program funds and elimination of funding "silos", and a sustained focus on activities critical to providing all students with equitable access to a high-quality education.

Proposed § 299.13 would establish the procedures and timelines for State plan submission and revision, including requirements for timely and meaningful consultation with stakeholders that are based on requirements in titles I, II, and III of the ESEA, as amended by the ESSA. The Department does not believe that the proposed consultation requirements would impose significant costs on States. We expect that, as part of carrying out their general education responsibilities, States will have already developed procedures for notifying the public and for conducting outreach to, and soliciting input from, stakeholders, as the regulations would require. In the Department's estimation, States would not incur significant costs in implementing those procedures for the State plans.

Proposed §§ 299.14 to 299.19 would establish requirements for the content of consolidated State plans (*i.e.,* the "necessary materials" discussed in section 8302(b)(3) of the ESEA, as amended by the ESSA). Proposed § 299.14 would establish five content areas of consolidated State plans, including: Consultation and coordination (the requirements for which are specified in proposed § 299.15); challenging academic standards and assessments (in proposed § 299.16); accountability, support, and improvement for schools (proposed § 299.17); supporting excellent educators (proposed § 299.18); and supporting all students (proposed § 299.19). We believe that, in general, the proposed requirements for these content areas would minimize burden on States insofar as they consolidate duplicative requirements and eliminate unnecessary requirements from State plans for individual covered programs.

Proposed § 299.15 would require States to describe how they engaged in timely and meaningful consultation with specified stakeholder groups in consolidated State plan development and how they are coordinating administration of covered programs and other Federal education programs. We estimate that the costs of complying with the proposed requirements in this section would be minimal.

Proposed § 299.16 would require States to demonstrate that their academic standards and assessments meet the requirements in section 1111(b) of the ESEA, as amended by the ESSA, and to describe how they will use Grants for State Assessments and Related Activities program funds to develop and administer such assessments or carry out other allowable activities. These proposed requirements would not impose significant new costs on States, which are already separately engaged in a review of their standards and assessment systems that would satisfy the applicable proposed requirements in this section.

The Department believes that the proposed requirements in §§ 299.17 and 299.18 would similarly not involve significant new costs for most States. Proposed § 299.17 would establish consolidated State plan requirements for describing the State's long-term goals, accountability system, school identifications, and support for low-performing schools, consistent with the requirements in section 1111(c) and (d) of the ESEA, as amended by the ESSA. Proposed § 299.18 would require States to describe their educator development, retention, and advancement systems and their use of Federal education program funds for State-level activities to improve educator quality and effectiveness, and to demonstrate that low-income and minority students in title I-participating schools are not taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers compared to their peers, consistent with the requirements in sections 1111(g), 2101, and 2102 of the ESEA, as amended by the ESSA. The Department anticipates that, in complying with proposed

§§ 299.17 and 299.18, States would rely to some degree on existing State ESEA flexibility requests and Educator Equity Plans. Accordingly, the proposed regulations should generally not result in significant new costs for States.

Finally, proposed § 299.19 would require States to describe how they and their LEAs are using Federal and other funds to close achievement gaps and provide all students equitable access to a high-quality education, and would include program-specific requirements necessary to ensure that such access is provided to particularly vulnerable student groups, including migrant students, English learners, and homeless children and youths. We believe that the proposed requirements in this section would accomplish this purpose with minimal burden on, and cost to, States, consistent with section 8302(b)(3) of the ESEA, as amended by the ESSA.

The major benefit of these proposed regulations, taken in their totality, is a more flexible, less complex and costly accountability framework for the implementation of the ESEA that respects State and local decision-making while continuing to ensure that States and LEAs use ESEA funds to ensure that all students have significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. This table provides our best estimate of the changes in annual monetized costs, benefits as a result of the proposed regulations. The transfers reflect appropriations for the affected programs. We note that the regulatory baselines differ within the table; the cost estimates are increments over and above what would be spent under ESEA if it had not been amended with ESSA, whereas the transfers (appropriations) are totals, rather than increments relative to ESEA. We further note that, although we refer to appropriations amounts as transfers, where they pay for new activities they would appropriately be categorized as costs.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Benefits
More flexible and less complex and costly accountability framework with uniform procedures.	Not Quantified.
More transparency and actionable data and information with uniform definitions, all of which provide a more comprehensive picture of performance and other key measures.	Not Quantified.
Less burden on States through simplified process for applying and planning for Federal education program funds.	Not Quantified.
Category	**Costs (over 4-year authorization)**
Uniform procedure for setting long-term goals and measurements of interim progress for English learners.	$166,400.
Review and approval of LEA comprehensive support and improvement plans.	$6,400,000.
State Report Cards	$478,400.
LEA Report Cards	$65,334,500.
Consolidated State Plans	$2,496,000.
Category	**Transfers (over 4-year authorization; based on FY 2016 appropriations)**
Title I, part A: Improving Basic Programs Operated by State and Local Educational Agencies.	$59,639,208,000.
Title I, part B: Grants for State Assessments	$1,512,000,000.
Title I, part C: Education of Migratory Children	$1,499,004,000.
Title I, part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk.	$190,456,000.
Title II, part A: Supporting Effective Instruction	$9,399,320,000.
Title III, part A: Language Instruction for English Learners and Immigrant Students.	$2,949,600,000.
Title IV, part A: Student Support and Academic Enrichment Grants	$6,450,000,000 (no FY 2016 funding; reflects authorization of appropriations).
Title IV, part B: 21st Century Community Learning Centers	$4,666,692,000.
Title V, part B, Subpart 2: Rural and Low-Income School Program	$351,680,000.
Education for Homeless Children and Youths program under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act.	$280,000,000.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading: for example, § 361.1 Purpose.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531), an agency must assess the effects of its regulatory actions on State, local, and tribal governments. The Department has set forth that assessment in the *Regulatory Impact Analysis.* The UMRA in § 1532 also requires that an agency provide a written statement regarding any regulation that would involve a Federal mandate. These proposed regulations do not involve a Federal mandate as defined in § 658 of UMRA because the duties imposed upon State, local, or tribal governments in these regulations are a condition of those governments' receipt of Federal formula grant funds under the ESEA.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed requirements would not have a significant economic impact on a substantial number of small entities. Under the U.S. Small Business Administration's Size Standards, small entities include small governmental jurisdictions such as cities, towns, or school districts (LEAs) with a population of less than 50,000. Although the majority of LEAs that receive ESEA funds qualify as small entities under this definition, the requirements proposed in this document would not have a significant economic impact on these small LEAs because the costs of implementing these requirements would be covered by funding received by these small LEAs under ESEA formula grant programs, including programs that provide funds exclusively for such small LEAs (*e.g.,* the Rural and Low-Income School program authorized under subpart 2 of part B of title V). The Department believes the benefits provided under this proposed regulatory action outweigh the burdens on these small LEAs of complying with the proposed requirements. In particular, the proposed requirements would help ensure that State plans for using ESEA formula grant funds, as well as State-provided technical assistance and other support intended to promote the effective and coordinated use of Federal, State, and local resources in ensuring that all students meet challenging State standards and graduate high school college- and career-ready, reflect the unique needs and circumstances of small LEAs and ensure the provision of educational resources that otherwise may not be available to small and often geographically isolated LEAs. The Secretary invites comments from small LEAs as to whether they believe the requirements proposed in this document would have a significant economic impact on them and, if so, requests evidence to support that belief.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 200.30, 200.31, 200.32, 200.33, 200.34, 200.35, 200.36, 200.37, and 299.13 contain information collection requirements. Under the PRA the Department has submitted a copy of these sections to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. In the final regulations, we will display the OMB control numbers assigned by OMB to any information collection requirement in the proposed regulations and adopted in the final regulations.

The proposed regulations would affect two currently approved information collections, 1810–0576 and 1810–0581. Under 1810–0576, *Consolidated State Application,* the Department is approved to collect information from States. We will replace the previously authorized consolidated State application with the consolidated State plan, authorized under section 8302 of the ESEA, as amended by the ESSA. The consolidated State plan seeks to encourage greater cross-program coordination, planning, and service delivery; to enhance program integration; and to provide greater flexibility and less burden for States. We will use the information from the consolidated State plan as the basis for approving funding under the covered programs. Under the proposed regulations, a State would be required to update its consolidated State plan at least every four years.

Proposed § 299.13 would permit a State to submit a consolidated State plan, instead of individual program applications. Each consolidated State plan must meet the requirements described in proposed §§ 299.14 to 299.19.

States may choose not to submit consolidated State plans; however, for purposes of estimating the burden, we will assume all States will choose to submit consolidated State plans. We estimate that over the three-year period for which we seek information collection approval, each of the 52 grantees will spend 1,200 additional hours developing the accountability systems to be described in the consolidated State plans, reporting on all elements that must be described in the consolidated State plans, and making any optional amendments to the consolidated State plans. Accordingly, we anticipate the total additional burden over three years to be 62,400 hours for all respondents, resulting in an increased annual burden of 20,800 hours under current information collection 1810–0576. Overall, the total burden under OMB 1810–0576 will be 23,200.

COLLECTION OF INFORMATION FROM SEAS: CONSOLIDATED STATE PLAN

Regulatory section	Information collection	OMB Control No. and estimated change in burden
§ 299.13	This proposed regulatory provision would allow States to submit consolidated State plans.	OMB 1810–0576. The burden would increase by 20,800 hours.

Under 1810–0581, *State Educational Agency, Local Educational Agency, and School Data Collection and Reporting Under ESEA, Title I, Part A,* the Department is approved to require States and LEAs to collect and disseminate information. The information collection currently authorizes the Department to require States and LEAs to develop and disseminate report cards, as well as information previously required through ESEA flexibility. The proposed regulations in §§ 200.30 to 200.37 would require additional burden, as they would require States and LEAs to revise the current report cards to include additional elements. However, the revised information collection would also reduce some of the existing burden, due to the elimination of currently approved reporting requirements and adjustments in the estimated time required to report on other required elements.

Section 1111(h) of the ESEA, as amended by the ESSA, requires States and LEAs to prepare and disseminate annual report cards; these report cards provide essential information to school communities regarding activities under title I of the ESEA.

Proposed § 200.30(a) would require each State to prepare and disseminate an annual State report card, and proposed 200.30(c) would require each annual State report card to be accessible. Currently, under 1810–0581, the Department estimates that the preparation and dissemination of State report cards requires 370 hours per respondent, resulting in a total burden across 52 States of 19,240 hours annually. On an annual basis, the Department estimates that the preparation and dissemination of accessible State report cards will continue to take 370 hours per respondent. However, as described below, the Department also anticipates a one-time increase in burden relating to some report card elements, based upon the changes in the proposed regulations.

Proposed § 200.30(b)(2) would require each State to add an overview to each report card. We anticipate that these requirements would require a one-time increase in burden for each State of 80 hours, for a total increase in burden across 52 grantees of 4,160 hours. Over the three-year period for which we seek approval for this information collection, this would result in an annual increase in burden of 1,387 hours.

Proposed § 200.30(e) would require each State that is unable to update its State and LEA report cards to reflect the proposed regulations by the established deadline to request an extension of the deadline, and to submit a plan to the Secretary addressing the steps the State will take to update the report cards. We anticipate the development of such a plan would require a one-time increase in burden for 15 States of 50 hours, for a total increase in burden of 750 hours. Over the three-year period for which we seek approval for this information collection, this would result in an annual increase in burden of 250 hours.

Proposed § 200.32(a) would require each State to describe provide a description of the State's accountability system. We anticipate that this requirement would add a one-time increase in burden for each State of 30 hours, for a total increase in burden across 52 grantees of 1,560 hours. Over the three-year period for which we seek approval for this information collection, this would result in an annual increase in burden of 520 hours.

Proposed §§ 200.32(c), 200.33, 200.34, 200.35, 200.36 and 200.37 would establish new requirements regarding the ways in which States calculate and report elements that are required on the State and LEA report cards. In total, we anticipate that these requirements would require a one-time increase in burden for each State to adjust its data system to address these requirements of 120 hours, for a total increase in burden across 52 grantees of 6,240 hours. Over the three-year period for which we seek approval for this information collection, this would result in an annual increase in burden of 2,080 hours.

Additionally, under 1810–0581, the Department is authorized to collect information regarding SES providers and ESEA flexibility. As SES is not required, and ESEA flexibility is not applicable, under the ESEA, as amended by the ESSA, we intend to reduce the burden attributable to these elements. The Department also includes burden estimates for some reporting requirements that we now intend to reduce, because these elements include data system adjustments that have already been completed. These changes decrease the annual burden for SEAs by 35,426 hours. Overall, the total burden for SEAs under 1810–0581 is reduced by 31,189 hours.

COLLECTION OF INFORMATION FROM SEAS: REPORT CARDS

Regulatory section	Information collection	OMB Control No. and estimated change in burden
§ 200.30(a); § 200.30(c); § 200.30(d).	The proposed regulatory provisions would require States to prepare and disseminate widely an annual State report card, and to ensure that the report cards are accessible.	OMB 1810–0581. No changes. The current information collection assumes that each State will require 370 hours to report the results of its accountability systems, for a total burden of 19,240 hours. The proposed regulations do not affect this estimate.
§ 200.30(b)(2)	The proposed regulatory provision would require State report cards to include an overview.	OMB 1810–0581. We estimate that the burden would increase by 1,387 hours.
§ 200.30(e)	The proposed regulatory provision would require any State that is unable, to update its State or LEA report cards with required elements by the deadline to develop and submit plans for updating the report cards.	OMB 1810–0581. We estimate the burden would increase by 250 hours.
§ 200.32(a)	The proposed regulatory provisions would require State report cards to include a description of the State's accountability system.	OMB 1810–0581. We estimate that the burden would increase by 520 hours.

COLLECTION OF INFORMATION FROM SEAS: REPORT CARDS—Continued

Regulatory section	Information collection	OMB Control No. and estimated change in burden
§ 200.32(c); § 200.33; § 200.34; § 200.35; § 200.36; § 200.37.	The proposed regulatory provisions would establish requirements regarding the ways in which States calculate certain data elements required on report cards.	OMB 1810–0581. The burden would increase by 2,080 hours.
None	Due to statutory changes under the Act, the Department reduces the burden estimates, as the Department will no longer collect previously approved information, as described above.	OMB 1810–0581. The burden would decrease by 35,426 hours.

Proposed §§ 200.21(d)(6) and 200.22(d)(2) would require each LEA to make publicly available, including by notifying parents under proposed §§ 200.21(b) and 200.22(b), the comprehensive and targeted support and improvement plans, including any amendments, for all identified schools served by the LEA to help ensure that plans may be developed in partnership with parents, teachers, and principals and other school leaders. We estimate that the resulting burden for each LEA will be 30 hours, on average, resulting in a total burden for 16,970 LEAs of 509,100 hours. Over the three-year period for which we seek approval, this would result in an annual increase in burden of 169,700 hours.

Proposed § 200.31(a) would require each LEA to prepare and disseminate an annual LEA report card, and proposed § 200.31(c) would require each annual LEA report card to be accessible. Currently, under 1810–0581, the Department estimates that the preparation and dissemination of LEA report cards requires 16 hours per respondent; we do not anticipate that the annual burden for each respondent will change, based upon the proposed regulations. However, we are changing the burden estimate, based upon an increase in the number of LEAs according to the most recently available data; there are currently 16,970 LEAs, an increase of 3,883 LEAs from the last estimate. As a result, we increase the estimated annual burden for preparation and dissemination of LEA report cards by 16 hours for each of these LEAs not previously incorporated, or 62,128 hours.

Proposed § 200.31(b)(2) would require each LEA to add an overview to each report card. We anticipate that these requirements would require a one-time increase in burden for each LEA of 80 hours, for a total increase in burden across 16,970 LEAs of 1,357,600 hours. Over the three-year period for which we seek approval, this would result in an annual increase in burden of 452,533 hours.

Proposed §§ 200.32 to 200.37 would establish requirements regarding the ways in which LEAs calculate and report elements that are currently required on the LEA report cards. However, we expect that the increase in burden resulting from these required changes would be addressed by similar required changes in the State's data system. Therefore, we do not anticipate an increase in the burden on LEAs resulting from these requirements.

Additionally, under 1810–0581, the Department is authorized to collect information regarding requirements from the ESEA, as amended by the NCLB, which are no longer applicable, such as restructuring plans for schools that do not meet AYP. The Department also includes in this information collection burden estimates for some reporting requirements that we now intend to reduce, because these elements include data system adjustments that have already happened. These changes result in a total decrease in annual burden for LEAs of 1,261,039 hours. Overall, based on the addition of new burden and the removal of burden that is no longer applicable, the total burden for LEAs under 1810–0581 is reduced by 786,070 hours.

COLLECTION OF INFORMATION FROM LEAS: REPORT CARDS AND PUBLIC REPORTING

Regulatory section	Information collection	OMB Control No. and estimated change in burden
§ 200.21(b); § 200.21(d)(6); § 200.22(b); § 200.22(d)(2).	The proposed regulatory provisions would require LEAs with schools identified for comprehensive or targeted support and improvement to make publicly available the resulting plans and any amendments to these plans, including notifying parents of the identification.	OMB 1810–0581. The burden would increase by 169,700 hours.
§ 200.31(a); § 200.31(c); § 200.31(d).	Adjusted estimate regarding the burden hours for preparation and dissemination of LEA report cards, including the requirement these reports cards are accessible to parents.	OMB 1810–0581. The burden would increase by 62,128 hours.
§ 200.31(b)	The proposed regulatory provisions would require LEAs to develop an overview of the report cards.	OMB 1810–0581. The burden would increase by 452,533 hours.
None	Adjusted burden estimate, based upon changes to the reporting requirements from the ESEA, as amended by the NCLB, to the ESEA, as amended by the ESSA.	OMB 1810–0581. The burden would decrease by 786,070 hours.

We have prepared an Information Collection Request (ICR) for these collections. If you want to review and comment on the ICR please follow the instructions listed under the **ADDRESSES** section of this document. Please note the Office of Information and Regulatory Affairs (OMB) and the Department review all comments on an ICR that are posted at *www.regulations.gov*. In preparing your comments you may want to review the ICR in *www.regulations.gov* or in *www.reginfo.gov*. The comment period will run concurrently with the comment period for the proposed regulations. When commenting on the information collection requirements, we consider your comments on these collections of information in—

- Deciding whether the collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond.

This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments by June 30, 2016. This does not affect the deadline for your comments to us on the proposed regulations.

ADDRESSES: Comments submitted in response to this document should be submitted electronically through the Federal eRulemaking Portal at *www.regulations.gov* by selecting Docket ID ED–2016–OESE–0032 or via postal mail commercial delivery, or hand delivery. Please specify the Docket ID number and indicate "Information Collection Comments" on the top of your comments if your comment relates to the information collections for the proposed regulations. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., Mailstop L–OM–2–2E319LBJ, Room 2E115, Washington, DC 20202–4537. Comments submitted by fax or email and those submitted after the comment period will not be accepted.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department. (Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects

34 CFR Part 200

Elementary and secondary education, Grant programs—education, Indians—education, Infants and children, Juvenile delinquency, Migrant labor, Private schools, Reporting and recordkeeping requirements

34 CFR Part 299

Administrative practice and procedure, Elementary and secondary education, Grant programs—education, Private schools, Reporting and recordkeeping requirements.

Dated: May 23, 2016.

John B. King, Jr.,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend parts 200 and 299 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

■ 1. The authority citation for part 200 is revised to read as follows:

Authority: 20 U.S.C. 6301 through 6376, unless otherwise noted.

§ 200.7 [Removed and Reserved]

■ 2. Remove and reserve § 200.7.

■ 3. Section 200.12 is revised to read as follows:

§ 200.12 Single statewide accountability system.

(a)(1) Each State must describe in its State plan under section 1111 of the Act that the State has developed and will implement, beginning no later than the 2017–2018 school year, a single, statewide accountability system that meets all requirements under paragraph (b) of this section in order to improve student academic achievement and school success among all public elementary and secondary schools, including public charter schools.

(2) A State that submits an individual program State plan for subpart A of this part under § 299.13(j) must meet all application requirements in § 299.17.

(b) The State's accountability system must—

(1) Be based on the challenging State academic standards under section 1111(b)(1) of the Act and academic assessments under section 1111(b)(2) of the Act, and include all indicators under § 200.14;

(2) Be informed by the State's long-term goals and measurements of interim progress under § 200.13;

(3) Take into account the achievement of all public elementary and secondary school students, consistent with §§ 200.15 through 200.17 and 200.20;

(4) Be the same accountability system the State uses to annually meaningfully differentiate all public schools in the State under § 200.18, and to identify schools for comprehensive and targeted support and improvement under § 200.19; and

(5) Include the process the State will use to ensure effective development and implementation of school support and improvement plans, including evidence-based interventions, to hold all public schools accountable for student academic achievement and school success consistent with §§ 200.21 through 200.24.

(c) The accountability provisions under this section must be overseen for public charter schools in accordance with State charter school law.

(Authority: 20 U.S.C. 6311(c); 20 U.S.C. 1221e–3)

■ 4. Remove the undesignated center heading "Adequate Yearly Progress (AYP)" following § 200.12.

■ 5. Section 200.13 is revised to read as follows:

§ 200.13 Long-term goals and measurements of interim progress.

In designing its statewide accountability system under § 200.12, each State must establish long-term goals and measurements of interim progress for, at a minimum, each of the following:

(a) *Academic achievement.* (1) Each State must describe in its State plan under section 1111 of the Act how it has established ambitious State-designed long-term goals and measurements of interim progress for improved academic achievement, as measured by grade-level proficiency on the annual assessments required under section 1111(b)(2)(B)(v)(I) of the Act, for all students and separately for each subgroup of students described in § 200.16(a)(2).

(2) In establishing the long-term goals and measurements of interim progress under paragraph (a)(1) of this section, a State must—

(i) Apply the same high standards of academic achievement to all public school students in the State, except as provided for students with the most significant cognitive disabilities consistent with section 1111(b)(1) of the Act;

(ii) Set the same multi-year timeline to achieve the State's long-term goals for all students and for each subgroup of students;

(iii) Measure achievement separately for reading/language arts and for mathematics; and

(iv) Take into account the improvement necessary for each subgroup of students described in § 200.16(a)(2) to make significant progress in closing statewide proficiency gaps, such that the State's measurements of interim progress require greater rates of improvement for subgroups of students that are lower-achieving.

(b) *Graduation rates.* (1) Each State must describe in its State plan under section 1111 of the Act how it has established ambitious State-designed long-term goals and measurements of interim progress for improved graduation rates for all students and separately for each subgroup of students described in § 200.16(a)(2).

(2) A State's long-term goals and measurements of interim progress under paragraph (b)(1) of this section must include—

(i) The four-year adjusted cohort graduation rate consistent with § 200.34(a); and

(ii) If a State chooses to use an extended-year adjusted cohort graduation rate as part of its Graduation Rate indicator under § 200.14(b)(3), the extended-year adjusted cohort graduation rate consistent with § 200.34(d), except that a State must set more rigorous long-term goals for such graduation rate, as compared to the long-term goals for the four-year adjusted cohort graduation rate.

(3) In establishing the long-term goals and measurements of interim progress under paragraph (b)(1) of this section, a State must—

(i) Set the same multi-year timeline to achieve the State's long-term goals for all students and for each subgroup of students; and

(ii) Take into account the improvement necessary for each subgroup of students described in § 200.16(a)(2) to make significant progress in closing statewide graduation rate gaps, such that a State's measurements of interim progress require greater rates of improvement for subgroups that graduate high school at lower rates.

(c) *English language proficiency.* (1) Each State must describe in its State plan under section 1111 of the Act how it has established ambitious State-designed long-term goals and measurements of interim progress for English learners toward attaining English language proficiency, as measured by the English language proficiency assessment required in section 1111(b)(2)(G) of the Act.

(2) The goals and measurements of interim progress under paragraph (c)(1) of this section—

(i) Must set expectations that each English learner will—

(A) Make annual progress toward attaining English language proficiency; and

(B) Attain English language proficiency within a period of time after the student's identification as an English learner, except that an English learner that does not attain English language proficiency within such time must not be exited from English learner services or status; and

(ii) Must be determined using a State-developed uniform procedure applied consistently to all English learners in the State that takes into consideration, at the time of a student's identification as an English learner, the student's English language proficiency level, and may take into consideration, at a State's discretion, one or more of the following student characteristics:

(A) Time in language instruction educational programs.

(B) Grade level.

(C) Age.

(D) Native language proficiency level.

(E) Limited or interrupted formal education, if any.

(Authority: 20 U.S.C. 6311(c); 20 U.S.C. 1221e–3)

■ 6. Section 200.14 is revised to read as follows:

§ 200.14 Accountability indicators.

(a) In its statewide accountability system under § 200.12, each State must, at a minimum, include four distinct indicators for each school that—

(1) Measure performance for all students and separately for each subgroup of students under § 200.16(a)(2); and

(2) Use the same measures within each indicator for all schools in the State, except as provided in paragraph (c)(2) of this section.

(b) A State must annually measure the following indicators consistent with paragraph (a) of this section:

(1) For all schools, an Academic Achievement indicator which—

(i) Must equally measure grade-level proficiency on the annual reading/language arts and mathematics assessments required under section 1111(b)(2)(B)(v)(I) of the Act;

(ii) Must include the performance of at least 95 percent of all students and 95 percent of all students in each subgroup consistent with § 200.15(b)(1); and

(iii) For high schools, may also measure, at the State's discretion, student growth based on the reading/language arts and mathematics assessments required under section 1111(b)(2)(B)(v)(I) of the Act.

(2) For elementary and secondary schools that are not high schools, an Academic Progress indicator, which must include either—

(i) A measure of student growth based on the annual assessments required under section 1111(b)(2)(B)(v)(I) of the Act; or

(ii) Another academic measure that meets the requirements of paragraph (c) of this section.

(3) For high schools, a Graduation Rate indicator, which—

(i) Must measure the four-year adjusted cohort graduation rate consistent with § 200.34(a); and

(ii) May measure, at the State's discretion, the extended-year adjusted cohort graduation rate consistent with § 200.34(d).

(4) For all schools, a Progress in Achieving English Language Proficiency indicator, based on English learner performance on the annual English language proficiency assessment required under section 1111(b)(2)(G) of the Act in each of grades 3 through 8 and in grades for which English learners are otherwise assessed under section 1111(b)(2)(B)(v)(I)(bb) of the Act, that—

(i) Takes into account students' English language proficiency level and, at a State's discretion, one or more student characteristics in the same manner in which the State determines its long-term goals for English learners under § 200.13(c)(2)(ii);

(ii) Uses objective and valid measures of progress such as student growth percentiles;

(iii) Is aligned with the State-determined timeline for attaining English language proficiency under § 200.13(c)(2)(i)(B); and

(iv) May also include a measure of proficiency (*e.g.*, an increase in percentage of English learners scoring proficient on the English language proficiency assessment required under section 1111(b)(2)(G) of the Act compared to the prior year).

(5) One or more indicators of School Quality or Student Success that meets the requirements of paragraph (c) of this section, which may vary by each grade span and include indicators of one or more of the following:

(i) Student access to and completion of advanced coursework.

(ii) Postsecondary readiness

(iii) School climate and safety.

(iv) Student engagement.

(v) Educator engagement.

(vi) Any other indicator the State chooses that meets the requirements of paragraph (c) of this section.

(c) A State must demonstrate in its State plan under section 1111 of the Act that each measure it selects to include within an indicator under this section—

(1) Is valid, reliable, and comparable across all LEAs in the State;

(2) Is calculated in the same way for all schools across the State, except that measures within the indicator of Academic Progress and within any indicator of School Quality or Student Success may vary by each grade span;

(3) Is able to be disaggregated for each subgroup of students described in § 200.16(a)(2); and

(4) Is used no more than once in its system of annual meaningful differentiation under § 200.18.

(d) A State must demonstrate in its State plan under section 1111 of the Act that each measure it selects to include within the indicators of Academic Progress and School Quality or Student Success is supported by research that performance or progress on such measures is likely to increase student achievement or, for measures within indicators at the high school level, graduation rates.

(e) A State must demonstrate in its State plan under section 1111 of the Act that each measure it selects to include within the indicators of Academic Progress and School Quality or Student Success aids in the meaningful differentiation of schools under § 200.18 by demonstrating varied results across all schools in the State.

(Authority: 20 U.S.C. 6311(c); 20 U.S.C. 1221e–3)

■ 7. Section 200.15 is revised to read as follows:

§ 200.15 Participation in assessments and annual measurement of achievement.

(a)(1) Each State must annually measure the achievement of at least 95 percent of all students, and 95 percent of all students in each subgroup of students under § 200.16(a)(2), who are enrolled in each public school on the assessments required under section 1111(b)(2)(B)(v)(I) of the Act.

(2) Each State must measure participation rates under paragraph (a)(1) of this section separately in reading/language arts and mathematics.

(b) For purposes of annual meaningful differentiation under § 200.18 and identification of schools under § 200.19, a State must—

(1) Calculate any measure in the Academic Achievement indicator under § 200.14(b)(1) so that the denominator of such measure, for all students and for all students in each subgroup, includes the greater of—

(i) 95 percent of all such students in the grades assessed who are enrolled in the school; or

(ii) The number of all such students enrolled in the school who are participating in the assessments required under section 1111(b)(2)(B)(v)(I) of the Act; and

(2) Factor the requirement for 95 percent student participation in assessments under paragraph (a) of this section into its system of annual meaningful differentiation so that missing such requirement, for all students or for any subgroup of students in a school, results in at least one of the following actions:

(i) A lower summative rating in the State's system of annual meaningful differentiation under § 200.18(b)(4).

(ii) The lowest performance level on the Academic Achievement indicator in the State's system of annual meaningful differentiation under § 200.18(b)(3).

(iii) Identification for, and implementation of, a targeted support and improvement plan consistent with the requirements under § 200.22.

(iv) Another equally rigorous State-determined action described in its State plan under section 1111 of the Act that will result in a similar outcome for the school in the system of annual meaningful differentiation and will improve the school's participation rate so that the school meets the requirements under paragraph (a) of this section. (c) To support the State in meeting the requirements of paragraph (a) of this section—

(1) A school that fails to assess at least 95 percent of all students or 95 percent of each subgroup of students must develop and implement an improvement plan that—

(i) Is developed in partnership with stakeholders (including principals and other school leaders, teachers, and parents);

(ii) Includes one or more strategies to address the reason or reasons for low participation rates in the school and improve participation rates in subsequent years;

(iii) Is approved by the LEA prior to implementation; and

(iv) Is monitored, upon submission and implementation, by the LEA; and

(2) An LEA with a significant number of schools that fail to assess at least 95 percent of all students or 95 percent of each subgroup of students must develop and implement an improvement plan that includes additional actions to support effective implementation of the school-level plans developed under paragraph (c)(1) and that is reviewed and approved by the State.

(3) If a State chooses to identify a school for targeted support and improvement under paragraph (b)(2)(iii) of this section, the requirement for such a school to develop and implement a targeted support and improvement plan consistent with § 200.22 fulfills the requirements of this paragraph.

(d)(1) A State must provide a clear and understandable explanation of how it has met the requirements of paragraph (b) of this section in its State plan under section 1111 of the Act and in its description of the State's system for annual meaningful differentiation of schools on its State report card pursuant to section 1111(h)(1)(C)(i)(IV) of the Act.

(2) A State, LEA, or school may not systematically exclude students in any subgroup of students under § 200.16(a) from participating in the assessments required under section 1111(b)(2)(B)(v)(I) of the Act.

(3) To count a student who is assessed based on alternate academic achievement standards described in section 1111(b)(1)(E) of the Act as a participant for purposes of meeting the requirements of this section, the State must have guidelines that meet the requirements described in section 1111(b)(2)(D)(ii) of the Act and must ensure that its LEAs adhere to such guidelines.

(4) A State may count a recently arrived English learner as defined in section 1111(b)(3)(A) of the Act as a

participant in the State assessment in reading/language arts for purposes of meeting the requirements in paragraph (a) of this section if he or she takes either the State's English language proficiency assessment under section 1111(b)(2)(G) of the Act or reading/language arts assessment under section 1111(b)(2)(B)(v)(I) of the Act.

(Authority: 20 U.S.C. 6311(b)–(c); 20 U.S.C. 1221e–3)

■ 8. Section 200.16 is revised to read as follows:

§ 200.16 Subgroups of students.

(a) *In general.* In establishing long-term goals and measurements of interim progress under § 200.13, measuring performance on each indicator under § 200.14, annually meaningfully differentiating schools under § 200.18, and identifying schools under § 200.19, each State must include the following categories of students consistent with the State's minimum number of students under § 200.17(a)(1):

(1) All public school students.

(2) Each of the following subgroups of students, separately:

(i) Economically disadvantaged students.

(ii) Students from each major racial and ethnic group.

(iii) Children with disabilities, as defined in section 8101(4) of the Act.

(iv) English learners, as defined in section 8101(20) of the Act.

(b) *English learners.* (1) With respect to a student previously identified as an English learner who has achieved English language proficiency consistent with the standardized, statewide entrance and exit procedures in section 3111(b)(2)(A) of the Act—

(i) A State may include such a student's performance within the English learner subgroup under paragraph (a)(2)(iv) of this section for not more than four years after the student ceases to be identified as an English learner for purposes of calculating the Academic Achievement indicator if the State develops a uniform statewide procedure for doing so that includes all such students and includes them—

(A) For the same State-determined period of time; and

(B) In determining if a school meets the State's minimum number of students for the English learner subgroup under § 200.17(a)(1).

(ii) A State may not include such a student within the English learner subgroup under paragraph (a)(2)(iv) of this section for—

(A) Any purpose in the accountability system, except as described in paragraph (b)(1)(i) of this section; or

(B) Purposes of reporting information on State and LEA report cards under section 1111(h) of the Act, except for providing information on each school's level of performance on the Academic Achievement indicator consistent with § 200.18(b)(3).

(2) With respect to an English learner with a disability for whom there are no appropriate accommodations for one or more domains of the English language proficiency assessment required under section 1111(b)(2)(G) of the Act because the disability is directly related to that particular domain (*e.g.,* a non-verbal English learner who cannot take the speaking portion of the assessment) as determined by the student's individualized education program (IEP) team or 504 team on an individualized basis, a State must, in measuring performance against the Progress in Achieving English Language Proficiency indicator, include such a student's performance on the English language proficiency assessment based on the remaining domains in which it is possible to assess the student.

(3) With respect to a recently arrived English learner as defined in section 1111(b)(3)(A) of the Act, a State must include such an English learner's results on the assessments under section 1111(b)(2)(B)(v)(I) of the Act upon enrollment in a school in one of the 50 States or the District of Columbia (hereafter "a school in the United States") in calculating long-term goals and measurements of interim progress under § 200.13(a), annually meaningfully differentiating schools under § 200.18, and identifying schools under § 200.19, except that the State may either—

(i)(A) Exempt such an English learner from the first administration of the reading/language arts assessment;

(B) Exclude such an English learner's results on the assessments under section 1111(b)(2)(B)(v)(I) and 1111(b)(2)(G) of the Act in calculating the Academic Achievement and Progress in Achieving English Language Proficiency indicators in the first year of such an English learner's enrollment in a school in the United States; and

(C) Include such an English learner's results on the assessments under section 1111(b)(2)(B)(v)(I) and 1111(b)(2)(G) of the Act in calculating the Academic Achievement and Progress in Achieving English Language Proficiency indicators in the second year of such an English learner's enrollment in a school in the United States and every year of enrollment thereafter; or

(ii)(A) Assess, and report the performance of, such an English learner on the assessments under section 1111(b)(2)(B)(v)(I) of the Act in each year of such an English learner's enrollment in a school in the United States;

(B) Exclude such an English learner's results on the assessments under section 1111(b)(2)(B)(v)(I) of the Act in calculating the Academic Achievement indicator in the first year of such an English learner's enrollment in a school in the United States;

(C) Include a measure of such an English learner's growth on the assessments under section 1111(b)(2)(B)(v)(I) of the Act in calculating the Academic Progress indicator, in the case of an elementary or middle school, and the Academic Achievement indicator, in the case of a high school, in the second year of such an English learner's enrollment in a school in the United States; and

(D) Include a measure of such an English learner's proficiency on the assessments under section 1111(b)(2)(B)(v)(I) of the Act in calculating the Academic Achievement indicator in the third year of such an English learner's enrollment in a school in the United States and every year of enrollment thereafter.

(4) A State may choose one of the exceptions described in paragraphs (b)(3)(i) or (ii) of this section for recently arrived English learners and must—

(i)(A) Apply the same exception to all recently arrived English learners in the State; or

(B) Develop and consistently implement a uniform statewide procedure for all recently arrived English learners that, in determining whether such an exception is appropriate for an English learner, considers the student's English language proficiency level and that may, at a State's discretion, consider one or more of the student characteristics under § 200.13(c)(2)(ii)(B) through (E); and

(ii) Report on State and LEA report cards under section 1111(h) of the Act the number and percentage of recently arrived English learners who are exempted from taking such assessments or whose results on such assessments are excluded from any indicator under § 200.14 on the basis of each exception described in paragraphs (b)(3)(i) and (ii) of this section.

(c) *State plan.* Each State must describe in its State plan under section 1111 of the Act how it has met the requirements of this section, including by describing any subgroups of students used in the accountability system in addition to those in paragraph (a)(2) of this section, its uniform procedure for including former English learners under paragraph (b)(1)(i) of this section, and its uniform procedure for including recently arrived English learners under paragraph (b)(4) of this section, if applicable.

(Authority: 20 U.S.C. 6311(b)–(c), (h); 20 U.S.C. 1221e–3)

■ 9. Section 200.17 is revised to read as follows:

§ 200.17 Disaggregation of data.

(a) *Statistically sound and reliable information.* (1) Based on sound statistical methodology, each State must determine the minimum number of students sufficient to—

(i) Yield statistically reliable information for each purpose for which disaggregated data are used, including purposes of reporting information under section 1111(h) of the Act or for purposes of the statewide accountability system under section 1111(c) of the Act; and

(ii) Ensure that, to the maximum extent practicable, each student subgroup in § 200.16(a)(2) is included at the school level for annual meaningful differentiation and identification of schools under §§ 200.18 and 200.19.

(2) Such number—

(i) Must be the same number for all students and for each subgroup of students in the State described in § 200.16(a)(2);

(ii) Must be the same number for all purposes of the statewide accountability system under section 1111(c) of the Act, including measuring school performance for each indicator under § 200.14;

(iii) Must not exceed 30 students, unless the State provides a justification for doing so in its State plan under section 1111 of the Act consistent with paragraph (a)(3)(v) of this section; and

(iv) May be a lower number for purposes of reporting under section 1111(h) under the Act than for purposes of the statewide accountability system under section 1111(c) of the Act.

(3) A State must include in its State plan under section 1111 of the Act—

(i) A description of how the State's minimum number of students meets the requirements of paragraphs (a)(1) of this section;

(ii) An explanation of how other components of the statewide accountability system, such as the State's uniform procedure for averaging data under § 200.20(a), interact with the State's minimum number of students to affect the statistical reliability and soundness of accountability data and to ensure the maximum inclusion of all students and each student subgroup under § 200.16(a)(2);

(iii) A description of the strategies the State uses to protect the privacy of individual students for each purpose for which disaggregated data is required, including reporting under section 1111(h) of the Act and the statewide accountability system under section 1111(c) of the Act, as required in paragraph (b) of this section;

(iv) Information regarding the number and percentage of all students and students in each subgroup described in § 200.16(a)(2) for whose results schools would not be held accountable in the State accountability system for annual meaningful differentiation under § 200.18; and

(v) If applicable, a justification, including data on the number and percentage of schools that would not be held accountable for the results of students in each subgroup under § 200.16(a)(2) in the accountability system, that explains how a minimum number of students exceeding 30 promotes sound, reliable accountability determinations.

(b) *Personally identifiable information.* (1) A State may not use disaggregated data for one or more subgroups under § 200.16(a) to report required information under section 1111(h) of the Act if the results would reveal personally identifiable information about an individual student, teacher, principal, or other school leader.

(2) To determine whether the collection and dissemination of disaggregated information would reveal personally identifiable information about an individual student, teacher, principal, or other school leader, a State must apply the requirements under section 444 of the General Education Provisions Act (the Family Educational Rights and Privacy Act of 1974).

(3) Nothing in paragraph (b)(1) or (2) of this section may be construed to abrogate the responsibility of a State to implement the requirements of section 1111(c) of the Act to annually meaningfully differentiate among all public schools in the State on the basis of the performance of all students and each subgroup of students under section 1111(c)(2) of the Act on all indicators under section 1111(c)(4)(B) of the Act.

(4) Each State and LEA must implement appropriate strategies to protect the privacy of individual students in reporting information under section 1111(h) of the Act and in establishing annual meaningful differentiation of schools in its statewide accountability system under section 1111(c) of the Act on the basis of disaggregated subgroup information.

(c) *Inclusion of subgroups in assessments.* If a subgroup under § 200.16(a) is not of sufficient size to produce statistically sound and reliable results, a State must still include students in that subgroup in its State assessments under section 1111(b)(2)(B)(i) of the Act.

(d) *Disaggregation at the LEA and State.* If the number of students in a subgroup is not statistically sound and reliable at the school level, a State must include those students in disaggregated information at each level for which the number of students is statistically sound and reliable (*e.g.,* the LEA or State level).

(Authority: 20 U.S.C. 6311(c), (h); 20 U.S.C. 1221e–3)

■ 10. Section 200.18 is revised to read as follows:

§ 200.18 Annual meaningful differentiation of school performance.

(a) In its State plan under section 1111 of the Act each State must describe how its statewide accountability system under § 200.12 establishes a system for annual meaningful differentiation for all public schools.

(b) A State must define annual meaningful differentiation in a manner that—

(1) Includes the performance of all students and each subgroup of students in a school, consistent with §§ 200.16, 200.17, and 200.20(c), on each of the indicators described in § 200.14;

(2) Includes, for each indicator, at least three distinct levels of school performance that are consistent with attainment of the long-term goals and measurements of interim progress under § 200.13 and that are clear and understandable to the public;

(3) Provides information on a school's level of performance on each indicator described in § 200.14, separately, as part of the description of the State's system for annual meaningful differentiation on LEA report cards under § 200.32;

(4) Results in a single rating from among at least three distinct rating categories for each school, based on a school's level of performance on each indicator, to describe a school's summative performance as part of the description of the State's system for annual meaningful differentiation on LEA report cards under §§ 200.31 and 200.32;

(5) Meets the requirements of § 200.15 to annually measure the achievement of at least 95 percent of all students and 95 percent of all students in each subgroup of students on the assessments described in section 1111(b)(2)(B)(v)(I) of the Act; and

(6) Informs the State's methodology described in § 200.19 for identifying schools for comprehensive support and

improvement and for targeted support and improvement.

(c) In providing annual meaningful differentiation among all public schools in the State, including providing a single summative rating for each school, a State must—

(1) Afford substantial weight to each of the following indicators, as applicable, under § 200.14—

(i) Academic Achievement indicator.

(ii) Academic Progress indicator.

(iii) Graduation Rate indicator.

(iv) Progress in Achieving English Language Proficiency indicator;

(2) Afford, in the aggregate, much greater weight to the indicators in paragraph (c)(1) of this section than to the indicator or indicators of School Quality or Student Success under § 200.14(b)(5), in the aggregate; and

(3) Within each grade span, afford the same relative weight to each indicator among all schools consistent with paragraph (e)(3) of this section.

(d) To show that its system of annual meaningful differentiation meets the requirements of paragraph (c) of this section, a State must—

(1) Demonstrate that performance on the indicator or indicators of School Quality or Student Success may not be used to change the identity of schools that would otherwise be identified for comprehensive support and improvement under § 200.19(a) unless such a school is also making significant progress, for all students consistent with § 200.16(a)(1), on at least one of the indicators described in paragraph (c)(1)(i) through (iii) of this section;

(2) Demonstrate that performance on the indicator or indicators of School Quality or Student Success may not be used to change the identity of schools that would otherwise be identified for targeted support and improvement under § 200.19(b), unless such a school is also making significant progress, for each consistently underperforming or low-performing subgroup of students, on at least one of the indicators described in paragraph (c)(1) of this section; and

(3) Demonstrate, based on the performance of all students and each subgroup of students, that a school performing in the lowest performance level under paragraph (b)(2) of this section on any of the indicators described in paragraph (c)(1) of this section receives a different summative rating than a school performing in the highest performance level on all indicators under § 200.14; and

(e)(1) A State must demonstrate in its State plan under section 1111 of the Act how it has met the requirements of paragraphs (c) and (d) of this section, including a description of how a State calculates the performance levels on each indicator and a summative rating for each school.

(2) In meeting the requirement in paragraph (c)(1) of this section to afford substantial weight to certain indicators, a State is not required to afford each such indicator the same substantial weight.

(3) If a school does not meet the State's minimum number of students under § 200.17(a)(1) for the English learner subgroup, a State must—

(i) Exclude the Progress in Achieving English Language Proficiency indicator from the annual meaningful differentiation for such a school under paragraph (b) of this section; and

(ii) Afford the Academic Achievement, Academic Progress, Graduation Rate, and School Quality or Student Success indicators the same relative weights in such a school as are afforded to such indicators in a school that meets the State's minimum number of students for the English learner subgroup.

(Authority: 20 U.S.C. 6311(c), (h); 20 U.S.C. 1221e–3)

■ 11. Section 200.19 is revised to read as follows:

§ 200.19 Identification of schools.

(a) *Schools identified for comprehensive support and improvement.* Based on its system for annual meaningful differentiation under § 200.18, each State must establish and describe in its State plan under section 1111 of the Act a methodology to identify one statewide category of schools for comprehensive support and improvement under § 200.21, which must include, at a minimum, the following three types of schools:

(1) *Lowest-performing.* The lowest-performing five percent of elementary, middle, and high schools in the State participating under subpart A of this part, based on each school's summative rating among all students and consistent with the requirements of § 200.18(c), over no more than three years consistent with § 200.20(a).

(2) *Low high school graduation rate.* Any public high school in the State with a four-year adjusted cohort graduation rate, as calculated under § 200.34(a), below 67 percent, or below a higher percentage selected by the State, over no more than three years consistent with § 200.20(a).

(3) *Chronically low-performing subgroup.* Any school participating under subpart A of this part and identified pursuant to paragraph (b)(2) of this section that has not improved, as defined by the State, after implementing a targeted support and improvement plan over no more than three years consistent with paragraph (d)(1)(i) of this section.

(b) *Schools identified for targeted support and improvement.* Based on its system for annual meaningful differentiation under § 200.18, each State must establish and describe in its State plan under section 1111 of the Act a methodology to identify schools for targeted support and improvement under § 200.22, which must include, at a minimum, the following two types of schools:

(1) *Consistently underperforming subgroup.* Any school with one or more consistently underperforming subgroups of students, as defined in paragraph (c) of this section and consistent with §§ 200.16 and 200.17, including at the State's discretion, any school identified due to assessment participation rates under § 200.15(b)(2)(iii) consistent with § 200.24(a)(1).

(2) *Low-performing subgroup receiving additional targeted support.* Any school in which one or more subgroups of students is performing at or below the summative level of performance of all students in any school identified under paragraph (a)(1) of this section.

(c) *Methodology to identify consistently underperforming subgroups.* The State's methodology to identify schools with one or more consistently underperforming subgroups of students under paragraph (b)(1) of this section must—

(1) Consider each school's performance among each subgroup of students in the school consistent with §§ 200.16 and 200.17, over no more than two years consistent with § 200.20(a);

(2) Take into account the indicators under § 200.14 used for annual meaningful differentiation under § 200.18 consistent with the requirements for weighting of indicators described in § 200.18(c); and

(3) Define a consistently underperforming subgroup of students in a uniform manner across all LEAs in the State, which must include one or more of the following:

(i) A subgroup of students that is not meeting the State's measurements of interim progress or is not on track to meet the State-designed long-term goals under § 200.13.

(ii) A subgroup of students that is performing at the lowest performance level under § 200.18(b)(3) in the system of annual meaningful differentiation on at least one indicator under § 200.14, or is particularly low performing on a measure within an indicator (*e.g.,* student proficiency on the State mathematics assessments).

(iii) A subgroup of students that is performing at or below a State-determined threshold as compared to the average performance among all students, or the highest-performing subgroup of students, in the State.

(iv) A subgroup of students that is performing significantly below the average performance among all students, or the highest-performing subgroup, in the State, such that the performance gap is among the largest in the State.

(v) Another definition that the State demonstrates in its State plan meets the requirements of paragraphs (c)(1) and (2) of this section.

(d) *Timeline.* (1)(i) A State must identify each type of school for comprehensive support and improvement under paragraphs (a)(1) through (3) of this section at least once every three years, beginning with identification for the 2017–2018 school year, except that identification of schools with chronically low-performing subgroups under paragraph (a)(3) of this section is not required for the 2017–2018 school year.

(ii) A State must identify schools with one or more consistently underperforming subgroups of students for targeted support and improvement under paragraph (b) of this section annually, beginning with identification for the 2018–2019 school year.

(iii) A State must identify schools with one or more low-performing subgroups of students for targeted support and improvement under paragraph (b)(2) of this section at least once every three years, with such identification occurring in each year, consistent with paragraph (d)(1)(i) of this section, that the State identifies schools under for comprehensive support and improvement, beginning with identification for the 2017–2018 school year.

(2) A State must identify schools for comprehensive and targeted support and improvement by the beginning of each school year, with the year of identification defined as the school year immediately following the most recent school year in which the State measured the school's performance on the indicators under § 200.14 that resulted in the school's identification (*e.g.,* data from the 2016–2017 school year inform identification for the 2017–2018 school year).

(Authority: 20 U.S.C. 6311(c) and (d); 20 U.S.C. 1221e–3)

■ 12. Section § 200.20 is revised to read as follows:

§ 200.20 Data procedures for annual meaningful differentiation and identification of schools.

(a) *Averaging data.* For the purposes of meeting the requirements for annual meaningful differentiation under § 200.18 and identification of schools under § 200.19, a State may establish a uniform procedure that includes one or both of the following:

(1) *Averaging data across school years.* (i) A State may average data across up to three school years.

(ii) If a State averages data across school years for these purposes, the State must—

(A) Use the same uniform procedure for averaging data from the school year for which the identification is made with data from one or two school years immediately preceding that school year for all public schools;

(B) Report data for a single school year, without averaging, on report cards under section 1111(h) of the Act; and

(C) Explain its uniform procedure for averaging data in its State plan under section 1111 of the Act and specify that such procedure is used in its description of the indicators used for annual meaningful differentiation on the State report card pursuant to section 1111(h)(1)(C)(i)(III) of the Act.

(2) *Combining data across grades.* (i) A State may combine data across grades in a school.

(ii) If a State combines data across grades for these purposes, the State must—

(A) Use the same uniform procedure for combining data for all public schools;

(B) Report data for each grade in the school on report cards under section 1111(h) of the Act; and

(C) Explain its uniform procedure for combining data in its State plan under section 1111 of the Act, and specify that such procedure is used in its description of the indicators used for annual meaningful differentiation in its accountability system on the State report card pursuant to section 1111(h)(1)(C)(i)(III) of the Act.

(b) *Partial enrollment.* (1) In calculating school performance on each of the indicators for the purposes of annual meaningful differentiation under § 200.18 and identification of schools under § 200.19, a State must include all students who were enrolled in the same school within an LEA for at least half of the academic year.

(2) A State may not use the performance of a student who has been enrolled in the same school within an LEA for less than half of the academic year in its system of annual meaningful differentiation and identification of schools, except that—

(i) An LEA must include such student in calculating the Graduation Rate indicator under § 200.14(b)(3), if applicable;

(ii) If such student exited a high school without receiving a regular high school diploma and without transferring to another high school that grants a regular high school diploma during such school year, the LEA must assign such student, for purposes of calculating the Graduation Rate indicator and consistent with the approach established by the State under § 200.34(f), to either—

(A) The high school in which such student was enrolled for the greatest proportion of school days while enrolled in grades 9 through 12; or

(B) The high school in which the student was most recently enrolled; and

(iii) All students, regardless of their length of enrollment in a school within an LEA during the academic year, must be included for purposes of reporting on the State and LEA report cards under section 1111(h) of the Act for such school year.

(Authority: 20 U.S.C. 6311(c); 20 U.S.C. 1221e–3)

■ 13. Section 200.21 is revised to read as follows:

§ 200.21 Comprehensive support and improvement.

(a) *In general.* A State must notify each LEA in the State that serves one or more schools identified for comprehensive support and improvement under § 200.19(a) of such identification no later than the beginning of the school year for which such school is identified.

(b) *Notice.* Upon receiving the notification from the State under paragraph (a) of this section, an LEA must promptly notify the parents of each student enrolled in the school of the school's identification for comprehensive support and improvement, including, at a minimum, the reason or reasons for the identification under § 200.19(a) (*e.g.,* low performance of all students, low graduation rate, chronically low-performing subgroup), and an explanation of how parents can become involved in the needs assessment under paragraph (c) of this section and in developing and implementing the comprehensive support and improvement plan described in paragraph (d) of this section. Such notice must—

(1) Be in an understandable and uniform format;

(2) Be, to the extent practicable, written in a language that parents can understand or, if it is not practicable to provide written translations to a parent with limited English proficiency, be orally translated for such parent; and

(3) Be, upon request by a parent or guardian who is an individual with a disability as defined by the Americans with Disabilities Act, 42 U.S.C. 12102, provided in an alternative format accessible to that parent.

(c) *Needs assessment.* For each identified school, an LEA must conduct, in partnership with stakeholders (including principals and other school leaders, teachers, and parents), a comprehensive needs assessment that examines, at a minimum—

(1) Academic achievement data on each of the assessments required under section 1111(b)(2)(B)(v) of the Act for all students in the school, including for each subgroup of students described in § 200.16(a)(2);

(2) The school's performance, including among subgroups of students described in § 200.16(a)(2), on the indicators and long-term goals and measurements of interim progress described in §§ 200.13 and 200.14;

(3) The reason or reasons the school was identified for comprehensive support and improvement under § 200.19(a); and

(4) At the LEA's discretion, the school's performance on additional, locally selected indicators that are not included in the State's system of annual meaningful differentiation under § 200.18 and that affect student outcomes in the identified school.

(d) *Comprehensive support and improvement plan.* Each LEA must, with respect to each school identified by the State for comprehensive support and improvement, develop and implement a comprehensive support and improvement plan for the school to improve student outcomes that—

(1) Is developed in partnership with stakeholders (including principals and other school leaders, teachers, and parents), as demonstrated, at a minimum, by describing in the plan how—

(i) Early stakeholder input was solicited and taken into account in the development of the plan, including the changes made as a result of such input; and

(ii) Stakeholders will participate in an ongoing manner in the plan's implementation;

(2) Includes and is based on the results of the needs assessment described in paragraph (c) of this section;

(3) Includes one or more interventions (*e.g.,* increasing access to effective teachers or adopting incentives to recruit and retain effective teachers; increasing or redesigning instructional time; interventions based on data from early warning indicator systems; reorganizing the school to implement a new instructional model; strategies designed to increase diversity by attracting and retaining students from varying socioeconomic backgrounds; replacing school leadership; in the case of an elementary school, increasing access to high-quality preschool; converting the school to a public charter school; changing school governance; closing the school; and, in the case of a public charter school, revoking or non-renewing the school's charter by its authorized public chartering agency consistent with State charter school law) to improve student outcomes in the school that—

(i) Meet the definition of "evidence-based" under section 8101(21) of the Act;

(ii) Are supported, to the extent practicable, by evidence from a sample population or setting that overlaps with the population or setting of the school to be served;

(iii) Are supported, to the extent practicable, by the strongest level of evidence that is available and appropriate to meet the needs identified in the needs assessment under paragraph (c) of this section; and

(iv) May be selected from among any State-established evidence-based interventions or a State-approved list of evidence-based interventions, consistent with State law and § 200.23(c)(2) and (3);

(4) Identifies and addresses resource inequities, by—

(i) Including a review of LEA and school-level resources among schools and, as applicable, within schools with respect to—

(A) Disproportionate rates of ineffective, out-of-field, or inexperienced teachers identified by the State and LEA consistent with sections 1111(g)(1)(B) and 1112(b)(2) of the Act; and

(B) Per-pupil expenditures of Federal, State, and local funds required to be reported annually consistent with section 1111(h)(1)(C)(x) of the Act; and

(ii) Including, at the LEA's discretion, a review of LEA- and school-level budgeting and resource allocation with respect to resources described in paragraph (d)(4)(i) of this section and the availability and access to any other resource provided by the LEA or school, such as—

(A) Advanced coursework;

(B) Preschool programs; and

(C) Instructional materials and technology;

(5) Must be fully implemented in the school year for which such school is identified, except that an LEA may have a planning year during which the LEA must carry out the needs assessment required under paragraph (c) of this section and develop the comprehensive support and improvement plan to prepare for successful implementation of interventions required under the plan on, at the latest, the first full day of the school year following the school year for which the school was identified;

(6) Must be made publicly available by the LEA, including to parents consistent with the requirements under paragraphs (b)(1) through (3) of this section; and

(7) Must be approved by the school identified for comprehensive support and improvement, the LEA, and the State.

(e) *Plan approval and monitoring.* The State must, upon receipt from an LEA of a comprehensive support and improvement plan under paragraph (d) of this section—

(1) Review such plan against the requirements of this section and approve the plan in a timely manner, as determined by the State, taking all actions necessary to ensure that the school and LEA are able to meet all of the requirements of paragraphs (a) through (d) of this section to develop and implement the plan within the required timeframe; and

(2) Monitor and periodically review each LEA's implementation of such plan.

(f) *Exit criteria.* (1) To ensure continued progress to improve student academic achievement and school success, the State must establish uniform statewide exit criteria for each school implementing a comprehensive support and improvement plan under this section. Such exit criteria must, at a minimum, require that the school—

(i) Improve student outcomes; and

(ii) No longer meet the criteria for identification under § 200.19(a) within a State-determined number of years (not to exceed four years).

(2) If a school does not meet the exit criteria established under paragraph (f)(1) of this section within the State-determined number of years, the State must, at a minimum, require the LEA to conduct a new comprehensive needs assessment that meets the requirements under paragraph (c) of this section.

(3) Based on the results of the new needs assessment, the LEA must, with respect to each school that does not meet the exit criteria, amend its

comprehensive support and improvement plan described in paragraph (d) of this section, in partnership with stakeholders consistent with the requirements in paragraph (d)(1) of this section, to—

(i) Address the reasons the school did not meet the exit criteria, including whether the school implemented the interventions with fidelity and sufficient intensity, and the results of the new needs assessment;

(ii) Update how it will continue to address previously identified resource inequities and to identify and address any newly identified resource inequities consistent with the requirements in paragraph (d)(4) of this section; and

(iii) Include implementation of additional interventions in the school that may address school-level operations (which may include staffing, budgeting, and changes to the school day and year) and that must—

(A) Be determined by the State, which may include requiring an intervention from among any State-established evidence-based interventions or a State-approved list of evidence-based interventions, consistent with State law and § 200.23(c)(2) and (3);

(B) Be more rigorous such that one or more evidence-based interventions in the plan are supported by strong or moderate evidence, consistent with section 8101(21)(A) of the Act; and

(C) Be supported, to the extent practicable, by evidence from a sample population or setting that overlaps with the population or setting of the school to be served.

(4) Each LEA must—

(i) Make the amended comprehensive support and improvement plan described in paragraph (f)(3) of this section publicly available, including to parents consistent with paragraphs (b)(1) through (3) of this section; and

(ii) Submit the amended plan to the State in a timely manner, as determined by the State.

(5) After the LEA submits the amended plan to the State, the State must—

(i) Review and approve the amended plan, and any additional amendments to the plan, consistent with the review process required under paragraph (e)(1) of this section; and

(ii) Increase its monitoring, support, and periodic review of each LEA's implementation of such plan.

(g) *State discretion for certain high schools.* With respect to any high school in the State identified for comprehensive support and improvement under § 200.19(a)(2), the State may—

(1) Permit differentiated improvement activities consistent with paragraph (d)(3) of this section as part of the comprehensive support and improvement plan, including in schools that predominantly serve students—

(i) Returning to education after having exited secondary school without a regular high school diploma; or

(ii) Who, based on their grade or age, are significantly off track to accumulate sufficient academic credits to meet high school graduation requirements, as established by the State; and

(2) In the case of such a school that has a total enrollment of less than 100 students, permit the LEA to forego implementation of improvement activities required under this section.

(h) *Public school choice.* Consistent with section 1111(d)(1)(D) of the Act, an LEA may provide all students enrolled in a school identified by the State for comprehensive support and improvement under § 200.19(a) with the option to transfer to another public school that is served by the LEA and that is not identified for comprehensive support and improvement under § 200.19(a), unless such an option is prohibited by State law or inconsistent with a Federal desegregation order, in which case the LEA must petition and obtain court approval for such transfers.

(Authority: 20 U.S.C. 6311(d); 20 U.S.C. 1221e–3)

■ 14. Section 200.22 is revised to read as follows:

§ 200.22 Targeted support and improvement.

(a) *In general.* With respect to each school that the State identifies under § 200.19(b) as a school requiring targeted support and improvement, each State must—

(1) Notify, no later than the beginning of the school year for which such school is identified, each LEA serving such school of the identification; and

(2) Ensure such LEA provides notification to each school identified for targeted support and improvement, including the reason for identification (*i.e.,* the subgroup or subgroups under § 200.16(a)(2) that are identified as consistently underperforming under § 200.19(b)(1), including, at the State's discretion, the subgroup or subgroups that are identified under § 200.15(b)(2)(iii), or the subgroup or subgroups that are low-performing under § 200.19(b)(2)), no later than the beginning of the school year for which such school is identified.

(b) *Notice.* (1) Upon receiving the notification from the State under paragraph (a)(1) of this section, the LEA must promptly notify the parents of each student enrolled in the school of the school's identification for targeted support and improvement, consistent with the requirements under § 200.21(b)(1) through (3).

(2) The notice must include—

(i) The reason or reasons for the identification under § 200.19(b) (*i.e.,* which subgroup or subgroups are consistently underperforming under § 200.19(b)(1), including any subgroup or subgroups identified under § 200.15(b)(2)(iii) if the State chooses to require such schools to implement targeted support and improvement plans, or which subgroup or subgroups are low-performing under § 200.19(b)(2)); and

(ii) An explanation of how parents can become involved in developing and implementing the targeted support and improvement plan described in paragraph (c) of this section.

(c) *Targeted support and improvement plan.* Upon receiving the notification from the LEA under paragraph (a)(2) of this section, each school must develop and implement a school-level targeted support and improvement plan to address the reason or reasons for identification and improve student outcomes for the lowest-performing students in the school that—

(1) Is developed in partnership with stakeholders (including principals and other school leaders, teachers, and parents) as demonstrated by, at a minimum, describing in the plan how—

(i) Early stakeholder input was solicited and taken into account in the development of each component of the plan, including the changes made as a result of such input; and

(ii) Stakeholders will have an opportunity to participate in an ongoing manner in such plan's implementation;

(2) Is designed to improve student performance for the lowest-performing students on each of the indicators under § 200.14 that led to the identification of the school for targeted support and improvement or, in the case of schools implementing targeted support and improvement plans consistent with § 200.15(b)(2)(iii), to improve student participation in the assessments required under section 1111(b)(2)(B)(v)(I) of the Act;

(3) Takes into consideration—

(i) The school's performance on the indicators and long-term goals and measurements of interim progress described in §§ 200.13 and 200.14, including student academic achievement on each of the assessments required under section 1111(b)(2)(B)(v) of the Act; and

(ii) At the school's discretion, the school's performance on additional, locally selected indicators that are not included in the State's system of annual meaningful differentiation under § 200.18 and that affect student outcomes in the identified school;

(4) Includes one or more interventions to address the reason or reasons for identification and improve student outcomes for the lowest-performing students in the school that—

(i) Meet the definition of "evidence-based" under section 8101(21) of the Act;

(ii) Are supported, to the extent practicable, by evidence from a sample population or setting that overlaps with the population or setting of the school to be served;

(iii) May be selected from among a State-approved list of evidence-based interventions, consistent with § 200.23(c)(2); and

(iv) Are supported, to the extent practicable, by the strongest level of evidence that is available and appropriate to improve student outcomes for the lowest-performing students in the school;

(5) Must be fully implemented in the school year for which such school is identified, except that a school identified under § 200.19(b)(2) or (c) may have a planning year during which the school must develop the targeted support and improvement plan and complete other activities necessary to prepare for successful implementation of interventions required under the plan on, at the latest, the first full day of the school year following the school year for which the school was identified;

(6) Is submitted to the LEA for approval, pursuant to paragraph (d) of this section;

(7) In the case of a school with low-performing subgroups as described in § 200.19(b)(2), identifies and addresses resource inequities and their effect on each low-performing subgroup in the school by—

(i) Including a review of LEA and school-level resources among schools and, as applicable, within schools with respect to—

(A) Disproportionate rates of ineffective, out-of-field, or inexperienced teachers identified by the State and LEA consistent with sections 1111(g)(1)(B) and 1112(b)(2) of the Act; and

(B) Per-pupil expenditures of Federal, State, and local funds required to be reported annually consistent with section 1111(h)(1)(C)(x) of the Act; and

(ii) Including, at the school's discretion, a review of LEA and school-level budgeting and resource allocation with respect to resources described in paragraph (c)(7)(i) of this section and the availability and access to any other resource provided by the LEA or school, such as—

(A) Advanced coursework;

(B) Preschool programs; and

(C) Instructional materials and technology; and

(8) For any school operating a schoolwide program under section 1114 of the Act, addresses the needs identified by the needs assessment required under section 1114(b)(6) of the Act.

(d) *Plan approval and monitoring.* The LEA must, upon receipt of a targeted support and improvement plan under paragraph (c) of this section from a school—

(1) Review each plan against the requirements of this section and approve such plan in a timely manner, taking all actions necessary to ensure that each school is able to meet all of the requirements under paragraphs (a) through (c) of this section within the required timeframe;

(2) Make the approved plan, and any amendments to the plan, publicly available, including to parents consistent with the requirements under § 200.21(b)(1) through (3); and

(3) Monitor the school's implementation of the plan.

(e) *Exit criteria.* Except with respect to schools described in paragraph (f) of this section, the LEA must establish and make publicly available, including to parents consistent with the requirements under § 200.21(b)(1) through (3), uniform exit criteria for schools identified by the State under § 200.19(b)(1) and use such criteria to make one of the following determinations with respect to each such school after a number of years as determined by the LEA:

(1) The school has successfully implemented its targeted support and improvement plan such that it no longer meets the criteria for identification and has improved student outcomes for its lowest-performing students, including each subgroup of students that was identified as consistently underperforming under § 200.19(c), or, in the case of a school implementing a targeted support and improvement plan consistent with § 200.15(b)(2)(iii), has met the requirement under § 200.15(a) for student participation in the assessments required under section 1111(b)(2)(B)(v)(I) of the Act, and may exit targeted support and improvement status.

(2) The school has unsuccessfully implemented its targeted support and improvement plan such that it has not improved student outcomes for its lowest-performing students, including each subgroup of students that was identified as consistently underperforming under § 200.19(c), or, in the case of a school implementing a targeted support and improvement plan consistent with § 200.15(b)(2)(iii), has failed to meet the requirement under § 200.15(a) for student participation in the assessments required under section 1111(b)(2)(B)(v)(I) of the Act, in which case the LEA must subsequently—

(i) Require the school to amend its targeted support and improvement plan to include additional actions that continue to meet all requirements under paragraph (c) of this section and address the reasons the school did not meet the exit criteria, and encourage interventions that either meet a higher level of evidence under paragraph (c)(4) of this section than the interventions included in the school's original plan or increase the intensity of effective interventions in the school's original plan;

(ii) Review and approve the school's amended plan consistent with the review process required under paragraph (d)(1) of this section; and

(iii) Increase its monitoring and support of such school's implementation of the plan.

(f) *Special rule for schools with low-performing subgroups.* (1) With respect to any school participating under subpart A of this part that has one or more low-performing subgroups as described in § 200.19(b)(2), the State must establish uniform statewide exit criteria that, at a minimum, ensure each such school—

(i) Improves student outcomes for its lowest-performing students, including each subgroup identified as low-performing under § 200.19(b)(2); and

(ii) No longer meets the criteria for identification under § 200.19(b)(2).

(2) If a school does not satisfy the exit criteria established under paragraph (f)(1) of this section, the State must identify the school for comprehensive support and improvement under § 200.19(a)(3), consistent with the requirement under § 200.19(d)(1)(i) for States to identify such schools at least once every three years.

(Authority: 20 U.S.C. 6311(d); 20 U.S.C. 1221e–3)

■ 15. Add § 200.23 to read as follows:

§ 200.23 State responsibilities to support continued improvement.

(a) *State support.* Each State must, with respect to each LEA in the State serving a significant number of schools identified for comprehensive support and improvement under § 200.19(a) and each LEA in the State serving a significant number of schools identified for targeted support and improvement under § 200.19(b), periodically review resource allocation between LEAs and between schools, consider any inequities identified under §§ 200.21(d)(4) and 200.22(c)(7), and, to the extent practicable, address any identified inequities in resources.

(b) *State technical assistance.* Each State must include in its State plan under section 1111 of the Act a description of technical assistance it will provide to each LEA in the State serving a significant number of schools identified for comprehensive or targeted support and improvement, including, at a minimum, a description of how it will provide technical assistance to LEAs to ensure the effective implementation of evidence-based interventions and support and increase their capacity to successfully—

(1) Develop and implement comprehensive support and improvement plans that meet the requirements of § 200.21;

(2) Ensure schools develop and implement targeted support and improvement plans that meet the requirements of § 200.22; and

(3) Develop or use tools related to—

(i) Conducting a school-level needs assessment consistent with § 200.21(c);

(ii) Selecting evidence-based interventions consistent with §§ 200.21(d)(3) and 200.22(c)(4); and

(iii) Reviewing resource allocation and identifying strategies for addressing any identified resource inequities consistent with §§ 200.21(d)(4) and 200.22(c)(7).

(c) *Additional improvement actions.* The State may—

(1) Take action to initiate additional improvement in any LEA, or in any authorized public chartering agency consistent with State charter school law, with a significant number of schools that are consistently identified for comprehensive support and improvement under § 200.19(a) and are not meeting exit criteria established under § 200.21(f) or a significant number of schools identified for targeted support and improvement under § 200.19(b), including school-level actions such as reorganizing a school to implement a new instructional model; replacing school leadership; converting a school to a public charter school; changing school governance; closing a school; or, in the case of a public charter school, revoking or non-renewing the school's charter consistent with State charter school law;

(2) Establish an exhaustive or non-exhaustive list of State-approved, evidence-based interventions consistent with the definition of evidenced-based under section 8101(21) of the Act for use in schools implementing comprehensive or targeted support and improvement plans under §§ 200.21 and 200.22;

(3) Consistent with State law, establish evidence-based State-determined interventions consistent with the definition of "evidenced-based" under section 8101(21) of the Act that can be used by LEAs in a school identified for comprehensive support and improvement under § 200.19(a), which may include whole-school reform models; and

(4) Request that LEAs submit to the State for review and approval, in a timely manner, the amended targeted support and improvement plan for each school in the LEA described in § 200.22(e)(2) prior to the approval of such plan by the LEA.

(Authority: 20 U.S.C. 6311(d); 20 U.S.C. 1221e–3)

■ 16. Add § 200.24 to read as follows:

§ 200.24 Resources to support continued improvement.

(a) *In general.* (1) A State must allocate school improvement funds that it reserves under section 1003(a) of the Act to LEAs to serve schools implementing comprehensive or targeted support and improvement plans under §§ 200.21 and 200.22, except that such funds may not be used to serve schools implementing targeted support and improvement plans consistent with § 200.15(b)(2)(iii).

(2) An LEA may apply for school improvement funds if—

(i) It has one or more schools identified for comprehensive support and improvement under § 200.19(a) or targeted support and improvement under § 200.19(b); and

(ii) It applies to serve each school in the LEA identified for comprehensive support and improvement that it has sufficient capacity to serve before applying to serve any school in the LEA identified for targeted support and improvement.

(b) *LEA application.* To receive school improvement funds under paragraph (a) of this section, an LEA must submit an application to the State to serve one or more schools identified for comprehensive or targeted support and improvement. In addition to any other information that the State may require, such an application must include each of the following:

(1) A description of one or more evidence-based interventions that are based on strong, moderate, or promising evidence under section 8101(21)(A) of the Act and that will be implemented in each school the LEA proposes to serve.

(2) A description of how the LEA will carry out its responsibilities under §§ 200.21 and 200.22 for schools it will serve with funds under this section, including how the LEA will—

(i) Develop and implement a comprehensive support and improvement plan that meets the requirements of § 200.21 for each school identified under § 200.19(a), for which the LEA receives school improvement funds to serve; and

(ii) Support each school identified under § 200.19(b), for which the LEA receives school improvement funds to serve, in developing and implementing a targeted support and improvement plan that meets the requirements of § 200.22.

(3) A budget indicating how it will allocate school improvement funds among schools identified for comprehensive and targeted support and improvement that it commits to serve.

(4) The LEA's plan to monitor schools for which the LEA receives school improvement funds, including the LEA's plan to increase monitoring of a school that does not meet the exit criteria consistent with § 200.21(f) or § 200.22(e) and (f).

(5) A description of the rigorous review process the LEA will use to recruit, screen, select, and evaluate any external partners with which the LEA will partner in carrying out activities supported with school improvement funds.

(6) A description of how the LEA will align other Federal, State, and local resources to carry out the activities supported with school improvement funds, and sustain effective activities in schools after funding under this section is complete.

(7) As appropriate, a description of how the LEA will modify practices and policies to provide operational flexibility, including with respect to school budgeting and staffing, that enables full and effective implementation of comprehensive targeted support and improvement plans.

(8) For any LEA that plans to use the first year of its school improvement funds for planning activities in a school that it will serve, a description of the activities that will be supported with school improvement funds, the timeline for implementing those activities, how such timeline will ensure full implementation of the comprehensive or targeted support and improvement

plan consistent with §§ 200.21(d)(5) and 200.22(c)(5), and how those activities will support successful implementation of comprehensive or targeted support and improvement plans.

(9) An assurance that each school the LEA proposes to serve will receive all of the State and local funds it would have received in the absence of funds received under this section.

(c) *Allocation of school improvement funds to LEAs.* (1) A State must review, in a timely manner, an LEA application for school improvement funds that meets the requirements of this section.

(2) In awarding school improvement funds under this section, a State must—

(i) Award the funds on a competitive or formula basis;

(ii) Make each award of sufficient size, with a minimum award of $500,000 per year for each school identified for comprehensive support and improvement to be served and a minimum award of $50,000 per year for each school identified for targeted support and improvement to be served, to enable the LEA to effectively implement all requirements of a support and improvement plan under § 200.21 or § 200.22, as applicable, including selected evidence-based interventions, except that a State may determine that an award of less than the minimum award amount is appropriate if the LEA demonstrates, in its application, that such lesser amount will be sufficient to support effective implementation of such plan; and

(iii) Make awards not to exceed four years, which may include a planning year consistent with paragraph (b)(7) of this section during which the LEA must plan to carry out activities that will be supported with school improvement funds by, at the latest, the beginning of the school year following the school year for which the school was identified, and that will support the successful implementation of interventions required under §§ 200.21 and 200.22, as applicable.

(3) If a State permits an LEA to have a planning year for a school under paragraph (c)(2)(iii) of this section, prior to renewing the LEA's school improvement award with respect to such school, the State must review the performance of the LEA in supporting such school during the planning year against the LEA's approved application and determine that the LEA will be able to ensure such school fully implements the activities and interventions that will be supported with school improvement funds by the beginning of the school year following the planning year.

(4) If a State has insufficient school improvement funds to award a grant of sufficient size to each LEA that submits an approvable application consistent with paragraph (c)(1) of this section, the State must, whether awarding funds through a formula or competition—

(i) Award funds to an LEA applying to serve a school identified for comprehensive support and improvement before awarding funds to an LEA applying to serve a school identified for targeted support and improvement;

(ii) Give priority in funding to an LEA that demonstrates the greatest need for such funds, as determined by the State, and based, at a minimum, on—

(A) The number or percentage of elementary and secondary schools in the LEA implementing plans under §§ 200.21 and 200.22;

(B) The State's review of resource allocation among and within LEAs under § 200.23(a); and

(C) Current academic achievement and student outcomes in the school or schools the LEA is proposing to serve.

(iii) Give priority in funding to an LEA that demonstrates the strongest commitment to use such funds to enable the lowest-performing schools to improve academic achievement and student outcomes, taking into consideration, with respect to the school or schools to be served—

(A) The proposed use of evidence-based interventions that are supported by the strongest level of evidence available; and

(B) Commitment to family and community engagement.

(iv) Take into consideration geographic diversity within the State.

(d) *State responsibilities.* (1) Each State must—

(i) Establish the method described in paragraph (c) of this section that the State will use to allocate school improvement funds to LEAs;

(ii) Monitor the use of funds by LEAs receiving school improvement funds;

(iii) Evaluate the use of school improvement funds by LEAs receiving such funds including by, at a minimum—

(A) Engaging in ongoing efforts to analyze the impact of the evidence-based interventions implemented using funds allocated under this section on student outcomes or other relevant outcomes; and

(B) Disseminating on a regular basis the State's findings on effectiveness of the evidence-based interventions to LEAs with schools identified under § 200.19;

(iv) Prior to renewing an LEA's award of school improvement funds with respect to a particular school each year and consistent with paragraph (c)(2)(ii) of this section, determine that—

(A) The school is making progress on the State's long-term goals and measurements of interim progress and accountability indicators under §§ 200.13 and 200.14; and

(B) The school is implementing evidence-based interventions with fidelity to the LEA's application and the requirements under §§ 200.21 and 200.22, as applicable; and

(v) As appropriate, reduce barriers and provide operational flexibility for each school in an LEA receiving funds under this section, including flexibility around school budgeting and staffing.

(2) A State may—

(i) Set aside up to five percent of the school improvement funds the State reserves under section 1003(a) of the Act to carry out the activities under paragraph (d)(1) of this section; and

(ii) Directly provide for school improvement activities funded under this section or arrange for their provision in a school through external partners such as school support teams, educational service agencies, or nonprofit or for-profit entities with expertise and a record of success in implementing evidence-based strategies to improve student achievement, instruction, and schools if the State has the authority under State law to take over the school or, if the State does not have such authority, with LEA approval with respect to each such school, and—

(A) The State undertakes a rigorous review process in recruiting, screening, selecting, and evaluating any external partner the State uses to carry out activities directly with school improvement funds; and

(B) The external provider has demonstrated success implementing the evidence-based intervention or interventions that are based on strong, moderate, or promising evidence consistent with section 8101(21)(A) of the Act that it will implement.

(e) *Reporting.* The State must include on its State report card required under section 1111(h)(1) of the Act a list of all LEAs, and schools served by such LEAs, that received funds under this section, including the amount of funds each LEA received to serve each such school and the types of interventions implemented in each such school with the funds.

(Authority: 20 U.S.C. 6303; 20 U.S.C. 6311(d); 20 U.S.C. 1221e–3)

■ 17. Revise the undesignated center heading following § 200.29 to read as follows:

State and LEA Report Cards

■ 18. Section 200.30 is revised to read as follows:

§ 200.30 Annual State report card.

(a) *State report cards in general.* (1) A State that receives funds under subpart A of this part must prepare and disseminate widely to the public, consistent with paragraph (d) of this section, an annual State report card for the State as a whole that meets the requirements of this section.

(2) Each State report card must include, at a minimum—

(i) The information required under section 1111(h)(1)(C) of the Act;

(ii) As applicable, for each authorized public chartering agency in the State—

(A) How the percentage of students in each subgroup defined in section 1111(c)(2) of the Act for each charter school authorized by such agency compares to such percentage for the LEA or LEAs from which the charter school draws a significant portion of its students, or the geographic community within the LEA in which the charter school is located, as determined by the State; and

(B) How academic achievement under § 200.30(b)(2)(i)(A) for students in each charter school authorized by such agency compares to that for students in the LEA or LEAs from which the charter school draws a significant portion of its students, or the geographic community within the LEA in which the charter school is located, as determined by the State; and

(iii) Any additional information that the State believes will best provide parents, students, and other members of the public with information regarding the progress of each of the State's public elementary schools and secondary schools, which may include the number and percentage of students requiring remediation in postsecondary education and the number and percentage of students attaining career and technical proficiencies.

(b) *Format.* (1) The State report card must be concise and presented in an understandable and uniform format that is developed in consultation with parents. Additionally, a State may choose to meets its cross-tabulation requirements under section 1111(g) of the Act through its State report cards.

(2) The State report card must begin with a clearly labeled overview section that is prominently displayed and includes the following statewide information for the most recent school year:

(i) For all students and disaggregated, at a minimum, for each subgroup of students under § 200.16(a)(2), results on—

(A) Each of the academic assessments in reading/language arts, mathematics, and science under section 1111(b)(2) of the Act, including the number and percentage of students at each level of achievement;

(B) Each measure included within the Academic Progress indicator under § 200.14(b)(2) for students in public elementary schools and secondary schools that are not high schools;

(C) The four-year adjusted cohort graduation rate and, if adopted by the State, any extended-year adjusted cohort graduation rate consistent with § 200.34; and

(D) Each measure included within the School Quality or Student Success indicator under § 200.14(b)(5).

(ii) The number and percentage of English learners achieving English language proficiency, as measured by the English language proficiency assessments under section 1111(b)(2)(G) of the Act.

(3) If the overview section required under paragraph (b)(2) of this section does not include disaggregated data for each subgroup required under section 1111(h)(1)(C) of the Act, a State must ensure that the disaggregated data not included in the overview section are otherwise included on the State report card.

(c) *Accessibility.* Each State report card must be in a format and language, to the extent practicable, that parents can understand in compliance with the requirements under § 200.21(b)(1) through (3).

(d) *Dissemination and availability.* (1) A State must—

(i) Disseminate widely to the public the State report card by, at a minimum, making it available on a single page of the SEA's Web site; and

(ii) Include on the SEA's Web site—

(A) The report card required under § 200.31 for each LEA in the State; and

(B) The annual report to the Secretary required under section 1111(h)(5) of the Act.

(e) *Timing of report card dissemination.* (1) Beginning with report cards based on information from the 2017–2018 school year, a State must annually disseminate report cards required under this section for the preceding school year no later than December 31.

(2) If a State cannot meet the December 31, 2018, deadline for reporting some or all of the newly required information under section 1111(h)(1)(C) of the Act for the 2017–2018 school year, the State may request from the Secretary a one-time, one-year extension for reporting on those To receive an extension, a State must submit to the Secretary, by July 1, 2018—

(i) Evidence satisfactory to the Secretary demonstrating that the State cannot meet the deadline in paragraph (e)(1) of this section; and

(ii) A plan and timeline addressing the steps the State will take to disseminate, as expeditiously as possible, report cards for the 2017–2018 school year consistent with this section.

(f) *Disaggregation of data.* (1) For the purpose of reporting disaggregated data under section 1111(h) of the Act, the following definitions apply:

(i) The term "migrant status" means status as a "migratory child" as defined in section 1309(3) of the Act, which means a child or youth who made a qualifying move in the preceding 36 months—

(A) As a migratory agricultural worker or a migratory fisher; or

(B) With, or to join, a parent or spouse who is a migratory agricultural worker or a migratory fisher.

(ii) The term "homeless status" means status as "homeless children and youths" as defined in section 725 of the McKinney-Vento Homeless Assistance Act, which means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 103(a)(1) of the McKinney-Vento Homeless Assistance Act) and includes—

(A) Children and youths who are—

(*1*) Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;

(*2*) Living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;

(*3*) Living in emergency or transitional shelters; or

(*4*) Abandoned in hospitals;

(B) Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 103(a)(2)(C) of the McKinney-Vento Homeless Assistance Act);

(C) Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(D) Migratory children (as defined in this paragraph) who qualify as homeless for the purposes of this section because they are living in circumstances described in paragraph (f)(1)(ii)(A) through (C) of this section.

(iii) With respect to the term "status as a child in foster care," the term "foster care" has the same meaning as defined in 45 CFR 1355(a), which means 24-hour substitute care for children placed away from their parents and for whom the title IV–E agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, tribal, or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

(iv) With respect to the term "student with a parent who is a member of the Armed Forces on active duty," the terms "Armed Forces" and "active duty" have the same meanings as defined in 10 U.S.C. 101(a)(4) and 101(d)(1):

(A) "Armed Forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(B) "Active duty" means full-time duty in the active military service of the United States, including full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

(2) A State is not required to report disaggregated data for information required on report cards under section 1111(h) of the Act if the number of students in the subgroup is insufficient to yield statistically sound and reliable information or the results would reveal personally identifiable information about an individual student, consistent with § 200.17.

(Authority: 20 U.S.C. 1221e–3; 6311(h))

■ 19. Section § 200.31 is revised to read as follows:

§ 200.31 Annual LEA report card.

(a) *LEA report cards in general.* (1) An LEA that receives funds under subpart A of this part must prepare and disseminate to the public, consistent with paragraph (d) of this section, an annual LEA report card that meets the requirements of this section and includes information on the LEA as a whole and each school served by the LEA.

(2) Each LEA report card must include, at a minimum, the information required under section 1111(h)(2)(C) of the Act.

(b) *Format.* (1) The LEA report card must be concise and presented in an understandable and uniform format that is developed in consultation with parents.

(2) Each LEA report card must begin with, for the LEA as a whole and for each school served by the LEA, a clearly labeled overview section that is prominently displayed and includes the following information for the most recent school year:

(i) For all students and disaggregated, at a minimum, for each subgroup of students required under § 200.16(a)(2)—

(A) All information required under § 200.30(b)(2);

(B) For the LEA, how academic achievement under § 200.30(b)(2)(i)(A) compares to that for students in the State as a whole; and

(C) For each school, how academic achievement under § 200.30(b)(2)(i)(A) compares to that for students in the LEA and the State as a whole.

(ii) For each school—

(A) The summative rating of the school consistent with § 200.18(b)(4);

(B) Whether the school is identified for comprehensive support and improvement under § 200.19(a) and, if so, the reason for such identification (*e.g.*, lowest-performing school, low graduation rates); and

(C) Whether the school is identified for targeted support and improvement under § 200.19(b) and, if so, each consistently underperforming or low-performing subgroup for which it is identified.

(iii) Identifying information, including, but not limited to, the name, address, phone number, email, student membership count, and status as a participating Title I school.

(3) Each LEA must ensure that the overview section required under paragraph (b)(2) of this section for each school served by the LEA can be distributed to parents, consistent with paragraph (d)(2)(i) of this section, on a single piece of paper.

(4) If the overview section required under paragraph (b)(2) of this section does not include disaggregated data for each subgroup required under section 1111(h)(1)(C) of the Act, an LEA must ensure that the disaggregated data not included in the overview section are otherwise included on the LEA report card.

(c) *Accessibility.* Each LEA report card must be in a format and language, to the extent practicable, that parents can understand in compliance with the requirements under § 200.21(b)(1) through (3).

(d) *Dissemination and availability.* (1) An LEA report card must be accessible to the public.

(2) At a minimum the LEA report card must be made available on the LEA's Web site, except that an LEA that does not operate a Web site may provide the information to the public in another manner determined by the LEA.

(3) An LEA must provide the information described in paragraph (b)(2) of this section to the parents of each student enrolled in each school in the LEA—

(i) Directly, through such means as regular mail or email, except that if an LEA does not have access to individual student addresses, it may provide information to each school for distribution to parents; and

(ii) In a timely manner, consistent with the requirements under paragraph (e) of this section.

(e) *Timing of report card dissemination.* (1) Beginning with report cards based on information from the 2017–2018 school year, an LEA must annually disseminate report cards under this section for the preceding school year no later than December 31.

(2) If an LEA cannot meet the December 31, 2018, deadline for reporting some or all of the newly required information under section 1111(h)(2)(C) of the Act for the 2017–2018 school year, a State may request from the Secretary a one-time, one-year extension for reporting on those elements on behalf of the LEA consistent with the requirements under § 200.30(e)(2).

(f) *Disaggregation of data.* For the purpose of reporting disaggregated data under section 1111(h)(2)(C) of the Act, the requirements under § 200.30(f) apply to LEA report cards.

(Authority: 20 U.S.C. 1221e–3; 6311(h))

■ 20. Section 200.32 is revised to read as follows:

§ 200.32 Description and results of a State's accountability system.

(a) *Accountability system description.* Each State and LEA report card must include a clear and concise description of the State's current accountability system under §§ 200.12 to 200.24. Each accountability system description must include—

(1) The minimum number of students that the State establishes under § 200.17 for use in the accountability system;

(2) The long-term goals and measurements of interim progress that the State establishes under § 200.13 for all students and for each subgroup of students, as described in § 200.16(a)(2);

(3) The indicators used by the State under § 200.14 to annually meaningfully

differentiate among all public schools, including, if applicable, the State's uniform procedure for averaging data across years or combining data across grades consistent with § 200.20;

(4) The State's system for annually meaningfully differentiating all public schools in the State under § 200.18, including—

(i) The specific weight, consistent with § 200.18(c), of each indicator described in § 200.14(b) in such differentiation;

(ii) The way in which the State factors the requirement for 95 percent student participation in assessments under § 200.15(a) into its system of annual meaningful differentiation described in §§ 200.15(b) and 200.18(b)(5);

(iii) The methodology by which the State differentiates all such schools under § 200.18(b), including information on the performance levels and summative ratings provided by the State consistent with § 200.18(b)(3) and (4);

(iv) The methodology by which the State identifies a school for comprehensive support and improvement as described in § 200.19(a); and

(v) The methodology by which the State identifies a school with one or more consistently underperforming subgroups of students for targeted support and improvement as described in § 200.19(c), including the time period used by the State to determine consistent underperformance of a subgroup; and

(5) The exit criteria established by the State under §§ 200.21(f) and 200.22(f), including the number of years by which a school must meet the exit criteria.

(b) *Reference to State plan.* To the extent that a State plan or another location on the SEA's Web site provides a description of the accountability system elements required in paragraph (a)(1) through (5) of this section that complies with the requirements under § 200.21(b)(1) through (3), a State or LEA may provide the Web address or URL of, or a direct link to, such State plan or location on the SEA's Web site to meet the reporting requirement for such accountability system elements.

(c) *Accountability system results.* (1) Each State and LEA report card must include, as applicable, the number and names of each public school in the State or LEA identified by the State for—

(i) Comprehensive support and improvement under § 200.19(a); or

(ii) Targeted support and improvement under § 200.19(b).

(2) For each school identified by the State for comprehensive support and improvement under § 200.19(a), the State and LEA report card must indicate which of the following reasons led to such identification:

(i) Lowest-performing school under § 200.19(a)(1).

(ii) Low graduation rates under § 200.19(a)(2).

(iii) One or more chronically low-performing subgroups under § 200.19(a)(3), including the subgroup or subgroups that led to such identification.

(3) For each school identified by the State for targeted support and improvement under § 200.19(b), the State and LEA report card must indicate—

(i) Which subgroup or subgroups led to the school's identification; and

(ii) Whether the school has one or more low-performing subgroups, consistent with § 200.19(b)(2).

(4) Each LEA report card must include, for each school served by the LEA, the school's performance level consistent with § 200.18(b)(3) on each indicator in § 200.14(b) and the school's summative rating consistent with § 200.18(b)(4).

(5) If a State includes more than one measure within any indicator under § 200.14(b), the LEA report card must include each school's results on each individual measure and the single performance level for the indicator overall, across all such measures.

(Authority: 20 U.S.C. 1221e–3; 6311(c), (h))

■ 21. Section 200.33 is revised to read as follows:

§ 200.33 Calculations for reporting on student achievement and progress toward meeting long-term goals.

(a) *Calculations for reporting student achievement results.* (1) Consistent with paragraph (a)(3) of this section, each State and LEA report card must include the percentage of students performing at each level of achievement under section 1111(b)(1)(A) of the Act (*e.g.*, proficient, advanced) on the academic assessments under section 1111(b)(2) of the Act, by grade.

(2) Consistent with paragraph (a)(3) of this section, each LEA report card must also—

(i) Compare the results under paragraph (a)(1) of this section for students served by the LEA with students in the State as a whole; and

(ii) For each school served by the LEA, compare the results under paragraph (a)(1) of this section for students enrolled in the school with students served by the LEA and students in the State as a whole.

(3) Each State and LEA must include, with respect to each reporting requirement under paragraphs (a)(1) and (2) of this section—

(i) Information for all students;

(ii) Information disaggregated by—

(A) Each subgroup of students in § 200.16(a)(2);

(B) Migrant status;

(C) Gender;

(D) Homeless status;

(E) Status as a child in foster care; and

(F) Status as a student with a parent who is a member of the Armed Forces on active duty; and

(iii) Results based on both—

(A) The percentage of students at each level of achievement, in which the denominator includes the greater of—

(*1*) 95 percent of all students, or 95 percent of each subgroup of students, who are enrolled in the school, LEA, or State, respectively; or

(*2*) The number of all such students enrolled in the school, LEA, or State, respectively, who participate in the assessments required under section 1111(b)(2)(B)(v) of the Act; and

(B) The percentage of students at each level of achievement, in which the denominator includes all students with a valid test score.

(b) *Calculation for reporting on the progress of all students and each subgroup of students toward meeting the State-designed long-term academic achievement goals.* (1) Each State and LEA report card must indicate whether all students and each subgroup of students described in § 200.16(a)(2) met or did not meet the State measurements of interim progress for academic achievement under § 200.13(a).

(2) To meet the requirements of paragraph (b)(1) of this section, each State and LEA must calculate the percentage of students who are proficient and above on the State assessments required under section 1111(b)(2)(B)(v)(I) of the Act based on a denominator that includes the greater of—

(i) 95 percent of all students, and 95 percent of each subgroup of students, who are enrolled in the school, LEA, or State, respectively; or

(ii) The number of all such students enrolled in the school, LEA, or State, respectively who participate in the assessments required under section 1111(b)(2)(B)(v)(I) of the Act.

(c) *Calculation for reporting the percentage of students assessed and not assessed.* (1) Each State and LEA report card must include the percentage of all students, and the percentage of students disaggregated by each subgroup of students described in § 200.16(a)(2), gender, and migrant status, assessed and not assessed on the assessments required under section 1111(b)(2)(B)(v) of the Act.

(2) To meet the requirements of paragraph (c)(1) of this section, each State and LEA must include in the denominator of the calculation all students enrolled in the school, LEA, or State, respectively, at the time of testing.

(Authority: 20 U.S.C. 1221e–3; 6311(c), (h))

■ 22. Section 200.34 is revised to read as follows:

§ 200.34 High school graduation rate.

(a) *Four-year adjusted cohort graduation rate.* A State must calculate a four-year adjusted cohort graduation rate for each public high school in the State in the following manner:

(1) The numerator must consist of the sum of—

(i) All students who graduate in four years with a regular high school diploma; and

(ii) All students with the most significant cognitive disabilities in the cohort, assessed using an alternate assessment aligned to alternate academic achievement standards under section 1111(b)(2)(D) of the Act and awarded a State-defined alternate diploma.

(2) The denominator must consist of the number of students who form the adjusted cohort of entering first-time students in grade 9 enrolled in the high school no later than the date by which student membership data is collected annually by the State for submission to the National Center for Education Statistics.

(3) For those high schools that start after grade 9, the cohort must be calculated based on the earliest high school grade students attend.

(b) *Adjusting the cohort.* (1) "Adjusted cohort" means the students who enter grade 9 (or the earliest high school grade) plus any students who transfer into the cohort in grades 9 through 12, and minus any students removed from the cohort.

(2) "Students who transfer into the cohort" means the students who enroll after the beginning of the date of the determination of the cohort, up to and including in grade 12.

(3) To remove a student from the cohort, a school or LEA must confirm in writing that the student—

(i) Transferred out, such that the school or LEA has official written documentation that the student enrolled in another school or educational program that culminates in the award of a regular high school diploma, or a State-defined alternate diploma for students with the most significant cognitive disabilities;

(ii) Emigrated to another country;

(iii) Transferred to a prison or juvenile facility and participates in an educational program that culminates in the award of a regular high school diploma, or State-defined alternate diploma for students with the most significant cognitive disabilities; or

(iv) Is deceased.

(4) A student who is retained in grade, enrolls in a general equivalency diploma program or other alternative education program that does not issue or provide credit toward the issuance of a regular high school diploma or a State-defined alternate diploma, or leaves school for any reason other than those described in paragraph (b)(3) of this section may not be counted as having transferred out for the purpose of calculating the graduation rate and must remain in the adjusted cohort.

(c) *Definition of terms.* For the purposes of calculating an adjusted cohort graduation rate under this section—

(1) "Students who graduate in four years" means students who earn a regular high school diploma at the conclusion of their fourth year, before the conclusion of their fourth year, or during a summer session immediately following their fourth year.

(2) "Regular high school diploma" means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA, as amended by the ESSA; and does not include a general equivalency diploma, certificate of completion, certificate of attendance, or any similar or lesser credential, such as a diploma based on meeting individualized education program (IEP) goals that are not fully aligned with the State's grade-level academic content standards.

(3) "Alternate diploma" means a diploma for students with the most significant cognitive disabilities, consistent with the State's definition under the proposed requirement in § 200.6(d)(1) that was subject to negotiated rulemaking under the ESSA and on which the negotiated rulemaking committee reached consensus, who are assessed with a State's alternate assessment aligned to alternate academic achievement standards under section 1111(b)(2)(D) of the Act and is—

(i) Standards-based;

(ii) Aligned with the State's requirements for a regular high school diploma; and

(iii) Obtained within the time period for which the State ensures the availability of a free appropriate public education under section 612(a)(1) of the Individuals with Disabilities Education Act (20 U.S.C. 11412(a)(1)).

(d) *Extended-year adjusted cohort graduation rate.* In addition to calculating a four-year adjusted cohort graduation rate, a State may calculate and report an extended-year adjusted cohort graduation rate.

(1) *"Extended-year adjusted cohort graduation rate"* means the number of students who graduate in one or more additional years beyond the fourth year of high school with a regular high school diploma or a State-defined alternate diploma, divided by the number of students who form the adjusted cohort for the four-year adjusted cohort graduation rate, provided that the adjustments account for any students who transfer into the cohort by the end of the year of graduation being considered minus the number of students who transfer out, emigrate to another country, transfer to a prison or juvenile facility, or are deceased, as described in paragraph (b)(3) of this section.

(2) A State may calculate one or more extended-year adjusted cohort graduation rates, except that no extended-year adjusted cohort graduation rate may be for a cohort period longer than seven years.

(e) *Reporting on State and LEA report cards.* (1) A State and LEA report card must include, at the school, LEA, and State levels—

(i) Four-year adjusted cohort graduation rates and, if adopted by the State, extended-year adjusted cohort graduation rates for all students and disaggregated by each subgroup of students in § 200.16(a)(2), homeless status, and status as a child in foster care.

(ii) Whether all students and each subgroup of students described in § 200.16(a)(2) met or did not meet the State measurements of interim progress for graduation rates under § 200.13(b).

(2) A State and its LEAs must report the four-year adjusted cohort graduation rate and, if adopted by the State, extended-year adjusted cohort graduation rate that reflects results of the immediately preceding school year.

(3) If a State adopts an extended-year adjusted cohort graduation rate, the State and its LEAs must report the extended-year adjusted cohort graduation rate separately from the four-year adjusted cohort graduation rate.

(4) A State that offers an alternate diploma for students with the most significant cognitive disabilities within the time period for which the State ensures the availability of a free appropriate public education must—

(i) Not delay the timely reporting of graduation rates under paragraph (e)(2) of this section; and

(ii) Annually update the four-year adjusted cohort graduation rates and, if adopted by the State, extended-year adjusted cohort graduation rates reported for a given year to include in the numerator any students with the most significant cognitive disabilities who obtain a State-defined alternate diploma within the time period for which the State ensures the availability of a free appropriate public education.

(f) *Partial school enrollment.* Each State must apply the same approach in all LEAs to determine whether students who are enrolled in the same school for less than half of the academic year as described in § 200.20(b) who exit high school without a regular high school diploma and do not transfer into another high school that grants a regular high school diploma are counted in the denominator for reporting the adjusted cohort graduation rate—

(1) At the school in which such student was enrolled for the greatest proportion of school days while enrolled in grades 9 through 12; or

(2) At the school in which the student was most recently enrolled.

(Authority: 20 U.S.C. 1221e–3; 6311(h); 7801(23), (25))

■ 23. Section 200.35 is revised to read as follows:

§ 200.35 Per-pupil expenditures.

(a) *State report card requirements.* (1) Each State report card must include the following:

(i) Current expenditures per pupil from Federal, State, and local funds, for the preceding fiscal year, consistent with the timeline in § 200.30(e), for each LEA in the State, and for each school served by each LEA—

(A) In the aggregate; and

(B) Disaggregated by source of funds, including—

(*1*) Federal funds; and

(*2*) State and local funds combined (including Impact Aid funds), which must not include funds received from private sources.

(ii) The Web address or URL of, or direct link to, a description of the uniform procedure required under paragraph (c) of this section that complies with the requirements under § 200.21(b)(1) through (3).

(2) Each State report card must also separately include, for each LEA, the amount of current expenditures per pupil that were not allocated to public schools in the LEA.

(b) *LEA report card requirements.* (1) Each LEA report card must include the following:

(i) Current expenditures per pupil from Federal, State, and local funds, for the preceding fiscal year, consistent with the timeline in § 200.31(e), for the LEA and each school served by the LEA—

(A) In total (Federal, State, and local funds); and

(B) Disaggregated by source of funds, including—

(*1*) Federal funds; and

(*2*) State and local funds combined (including Impact Aid funds), which must not include funds received from private sources.

(ii) The Web address or URL of, or direct link to, a description of the uniform procedure required under paragraph (c) of this section.

(2) Each LEA report card must also separately include the amount of current expenditures per pupil that were not allocated to public schools in the LEA.

(c) *Uniform procedures.* A State must develop a single statewide procedure to calculate LEA current expenditures per pupil and a single statewide procedure to calculate school-level current expenditures per pupil, such that—

(1) The numerator consists of current expenditures, which means actual personnel costs (including actual staff salaries) and actual nonpersonnel expenditures of Federal, State, and local funds, used for public education—

(i) Including, but not limited to, expenditures for administration, instruction, instructional support, student support services, pupil transportation services, operation and maintenance of plant, fixed charges, and preschool, and net expenditures to cover deficits for food services and student body activities; but

(ii) Not including expenditures for community services, capital outlay, and debt service; and

(2) The denominator consists of the aggregate number of students in elementary and secondary schools to whom the State and LEA provide free public education on October 1, consistent with the student membership data collected annually by States for submission to the National Center for Education Statistics.

(Authority: 20 U.S.C. 1221e–3; 6311(h))

■ 24. Section 200.36 is revised to read as follows:

§ 200.36 Postsecondary enrollment.

(a) *Reporting information on postsecondary enrollment.* (1) Each State and LEA report card must include the information at the SEA, LEA and school level on postsecondary enrollment required under section 1111(h)(1)(C)(xiii) of the Act, where available, consistent with paragraph (c) of this section. This information must include, for each high school in the State (in the case of a State report card) and for each high school in the LEA (in the case of an LEA report card), the cohort rate (for all students and each subgroup of students under section § 200.16(a)(2)) at which students who graduate from high school enroll in programs of postsecondary education, including—

(i) Programs of public postsecondary education in the State; and

(ii) If data are available and to the extent practicable, programs of private postsecondary education in the State or programs of postsecondary education outside the State.

(2) For the purposes of this section, "programs of postsecondary education" has the same meaning as the term "institution of higher education" under section 101(a) of the Higher Education Act of 1965, as amended.

(b) *Calculating postsecondary enrollment.* To meet the requirements of paragraph (a) of this section, each State and each LEA must calculate the cohort rate in the following manner:

(1) The numerator must consist of the number of students who enroll in a program of postsecondary education in the academic year immediately following the students' high school graduation.

(2) The denominator must consist of the number of students who graduated with a regular high school diploma or a State-defined alternate diploma from each high school in the State, in accordance with § 200.34, in the immediately preceding school year.

(c) *Information availability.* (1) For the purpose of paragraph (a) of this section, information is "available" if either—

(i) The State is routinely obtaining the information; or

(ii) The information is obtainable by the State on a routine basis.

(2) If the postsecondary enrollment information described in paragraph (a) of this section is not available or is partially available, the State and LEA report cards must include the school year in which such information is expected to be fully available.

(Authority: 20 U.S.C. 1001; 1221e–3; 6311(h))

■ 25. Section 200.37 is revised to read as follows:

§ 200.37 Educator qualifications.

(a) *Professional qualifications of educators in the State.* Each State and LEA report card must include, in the aggregate and disaggregated by high-poverty and low-poverty schools, the number and percentage of the following:

(1) Inexperienced teachers, principals, and other school leaders;

(2) Teachers teaching with emergency or provisional credentials; and

(3) Teachers who are not teaching in the subject or field for which the teacher is certified or licensed.

(b) *Uniform definitions.* To meet the requirements of paragraph (a) of this section—

(1) "High-poverty schools" means schools in the top quartile of poverty in the State and "low-poverty schools" means schools in the bottom quartile of poverty in the State; and

(2) Each State must adopt, and the State and each LEA in the State must use, a statewide definition of the term "inexperienced" and of the phrase "not teaching in the subject or field for which the teacher is certified or licensed."

(Authority: 20 U.S.C. 1221e–3; 6311(h))

§§ 200.38 through 200.42 [Removed and Reserved]

■ 26. Remove and reserve §§ 200.38 through 200.42.

■ 27. Add an undesignated center heading following reserved § 200.42 to read as follows:

Other State Plan Provisions

§ 200.43 [Removed]

■ 28. Remove § 200.43.

§ 200.58 [Redesignated as § 200.43]

■ 29. Redesignate § 200.58 as § 200.43.

§§ 200.44 through 200.47 [Removed and Reserved]

■ 30. Remove and reserve §§ 200.44 through 200.47.

■ 31. Add an undesignated center heading following reserved § 200.47 to read as follows:

Local Educational Agency Plans

§ 200.48 [Removed]

■ 32. Remove § 200.48.

§ 200.61 [Redesignated as 200.48]

■ 33. Redesignate § 200.61 as § 200.48.

§§ 200.49 through 200.53 [Removed and Reserved]

■ 34. Remove and reserve §§ 200.49 through 200.53.

■ 35. Add an undesignated center heading following reserved § 200.54 to read as follows:

Participation of Eligible Children in Private Schools

§§ 200.55 through 200.57 [Removed and Reserved]

■ 36. Remove §§ 200.55 through 200.57.

§§ 200.62 through 200.64 [Redesignated as §§ 200.55 through 200.57]

■ 37. Redesignate §§ 200.62 through 200.64 as §§ 200.55 through 200.57.

§§ 200.58 through 200.60 [Removed]

■ 38. Remove §§ 200.58 through 200.60.

§ 200.65 [Redesignated as § 200.58]

■ 39. Redesignate § 200.65 as § 200.58.

§§ 200.66 through 200.67 [Redesignated as §§ 200.59 through 200.60]

■ 40. Redesignate §§ 200.66 through 200.67 as §§ 200.59 through 200.60.

§ 200.61 [Reserved]

■ 41. Add reserved §§ 200.61.

§ 200.62 [Removed and Reserved]

■ 42. Remove and reserve § 200.62.

■ 43. Add an undesignated center heading following reserved § 200.62 to read as follows:

Allocations to LEAs

§§ 200.63 through 200.67 [Removed]

■ 44. Remove §§ 200.63 through 200.67.

§§ 200.70 through 200.75 [Redesignated as §§ 200.63 through 200.68]

■ 45. Redesignate §§ 200.70 through 200.75 as §§ 200.63 through 200.68.

■ 46. Add an undesignated center heading following reserved § 200.69 to read as follows:

Procedures for the Within-District Allocation of LEA Program Funds

§§ 200.77 and 200.78 [Redesignated as §§ 200.70 and 200.71]

■ 47. Redesignate §§ 200.77 and 200.78 as §§ 200.70 and 200.71.

■ 48. Add an undesignated center heading following § 200.71 to read as follows:

Fiscal Requirements

§ 200.79 [Redesignated as § 200.73]

■ 49. Redesignate § 200.79 as § 200.73.

§ 200.79 [Reserved]

■ 50. Add reserved § 200.79.

PART 299—GENERAL PROVISIONS

■ 51. The authority citation for part 299 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3(a)(1), unless otherwise noted)

■ 52. Add Subpart G to read as follows:

Subpart G—State Plans

Sec.
299.13 Overview of State Plan Requirements.
299.14 Requirements for the consolidated State plan.
299.15 Consultation and coordination.
299.16 Challenging academic standards and academic assessments.
299.17 Accountability, support, and improvement for schools.
299.18 Supporting excellent educators.
299.19 Supporting all students.

Subpart G—State Plans

§ 299.13 Overview of State plan requirements.

(a) *In general.* In order to receive a grant under a program identified in paragraph (j) of this section, an SEA must submit a State plan that meets the requirements in this section and:

(1) Consolidated State plan requirements detailed in §§ 299.14 to 299.19; or

(2) Individual program application requirements under the Act (hereinafter "individual program State plan") as detailed in paragraph (k) of this section.

(b) *Timely and meaningful consultation.* In developing, revising, or amending a consolidated State plan or an individual program State plan, an SEA must engage in timely and meaningful consultation with stakeholders. To satisfy its obligations under this paragraph, each SEA must—

(1) Provide public notice, in a format and language, to the extent practicable, that the public can access and understand in compliance with the requirements under § 200.21(b)(1) through (3), of the SEA's processes and procedures for developing and adopting its consolidated State plan or individual program State plan.

(2) Conduct outreach to, and solicit input from, the individuals and entities listed in § 299.15(a) for submission of a consolidated State plan or the individuals and entities listed in the applicable statutes for submission of an individual program State plan—

(i) During the design and development of the SEA's plan to implement the programs included in paragraph (j) of this section;

(ii) Prior to submission of the consolidated State plan or individual program State plan by making the plan available for public comment for a period of not less than 30 days; and

(iii) Prior to the submission of any revisions or amendments to the consolidated State plan or individual program State plan.

(3) Describe how the consultation and public comment were taken into account in the consolidated State plan or individual program State plan submitted for approval, including—

(i) How the SEA addressed the issues and concerns raised through consultation and public comment; and

(ii) Any changes made as a result of consultation and public comment.

(4) Meet the requirements under section 8540 of the Act regarding

consultation with the Governor, or appropriate officials from the Governor's office, including consultation during the development of a consolidated State plan or individual title I or title II State plan and prior to submission of such plan to the Secretary and procedures regarding the signature of such plan.

(c) *Assurances.* An SEA that submits either a consolidated State plan or an individual program State plan must submit to the Secretary the assurances included in section 8304 of the Act. An SEA also must include the following assurances when submitting either a consolidated State plan or an individual program State plan for the following programs:

(1) *Title I, part A.* (i) The SEA will assure that, in applying the same approach in all LEAs to determine whether students who are enrolled in the same school for less than half of the academic year as described in § 200.20(b) who exit high school without a regular high school diploma and do not transfer into another high school that grants a regular high school diploma are counted in the denominator for reporting the adjusted cohort graduation rate using one of the following:

(A) At the school in which such student was enrolled for the greatest proportion of school days while enrolled in grades 9 through 12; or

(B) At the school in which the student was most recently enrolled.

(ii) The SEA will ensure that an LEA receiving funds under title I, part A of the Act will provide children in foster care transportation, as necessary, to and from their schools of origin, consistent with the procedures developed by the LEA in collaboration with the State or local child welfare agency under section 1112(c)(5)(B) of the Act, even if the LEA and local child welfare agency do not agree on which agency or agencies will pay any additional costs incurred to provide such transportation.

(2) *Title III, part A.* In establishing the statewide entrance procedures required under section 3113(b)(2) of the Act, the SEA will ensure that:

(i) All students who may be English learners are assessed for such status using a valid and reliable instrument within 30 days after enrollment in a school in the State;

(ii) It has established procedures for the timely identification of English learners after the initial identification period for students who were enrolled at that time but were not previously identified; and

(iii) It has established procedures for removing the English learner designation from any student who was erroneously identified as an English learner, which must be consistent with Federal civil rights obligations.

(3) *Title V, part b, subpart 2.* The SEA will assure that, no later than March of each year, it will submit data to the Secretary on the number of students in average daily attendance for the preceding school year in kindergarten through grade 12 for LEAs eligible for funding under the Rural and Low-Income School program, as described under section 5231 of the Act.

(d) *Process for submitting an initial consolidated State plan or individual program State plan.* When submitting an initial consolidated State plan or an individual program State plan, an SEA must adhere to the following timeline and process.

(1) *Assurances.* In order to receive Federal allocations for the programs included in paragraph (j) of this section for fiscal year 2017, no later than March 6, 2017, the SEA must submit the required assurances described in paragraph (c) of this section.

(2) *Submission deadlines.* (i) Each SEA must submit to the Department either a consolidated State plan or individual program State plan for each program in paragraph (j) of this section on a date and time established by the Secretary.

(ii) A consolidated State plan or an individual program State plan is considered to be submitted on the date and time established by the Secretary if it is received by the Secretary on or prior to that date and time and addresses all of the required components in § 299.14 for a consolidated State plan or all statutory and regulatory application requirements for an individual program State plan.

(iii) Each SEA must submit either a consolidated State plan or an individual program State plan for all of the programs in paragraph (j) in a single submission on the date and time established by the Secretary consistent with paragraph (d)(2)(i) of this section.

(3) *Extension for educator equity student-level data calculation.* If an SEA cannot calculate and report the data required under paragraph § 299.18(c)(3)(i) when submitting its initial consolidated State plan or individual title I, part A State plan, the SEA may request a two-year extension from the Secretary.

(i) To receive an extension, the SEA must submit to the Secretary, by eight weeks after the effective date of this section—

(A) Evidence satisfactory to the Secretary demonstrating that the State cannot calculate and report the data described under paragraph § 299.18(c)(3)(i) when it submits either its initial consolidated State plan or individual title I, part A program State plan; and

(B) A detailed plan and timeline addressing the steps the SEA will take to calculate and report, as expeditiously as possible but no later than two years from the date it submits its initial consolidated State plan or individual title I, part A program State plan, the data required under § 299.18(c)(3)(i).

(ii) An SEA that receives an extension under paragraph (d)(3) of this section must, when it submits either its initial consolidated State plan or individual title I, part A program State plan, still calculate and report disproportionalities based on school-level data for each of the groups listed in § 299.18(c)(2) and describe how the SEA will eliminate any disproportionate rates consistent with § 299.18(c)(6).

(e) *Opportunity to revise initial State plan.* An SEA may revise its initial consolidated State plan or its individual program State plan in response to a preliminary written determination by the Secretary. The period for Secretarial review of a consolidated State plan or an individual program State plan under sections 1111(a)(4)(A)(v) or 8451 of the Act is suspended while the SEA revises its plan. If an SEA fails to resubmit revisions to its plan within 45 days of receipt of the preliminary written determination, the Secretary may issue a final written determination under sections 1111(a)(4)(A)(v) or 8451 of the Act.

(f) *Publication of State plan.* After the Secretary approves a consolidated State plan or an individual program State plan, an SEA must publish its approved consolidated State plan or individual program State plan on the SEA's Web site in a format and language, to the extent practicable, that the public can access and understand in compliance with the requirements under § 200.21(b)(1) through (3).

(g) *Amendments and Significant Changes.* If an SEA makes significant changes to its approved consolidated State plan or individual program State plan at any time, such as the adoption of new academic assessments under section 1111(b)(2) of the Act or changes to its accountability system under section 1111(c) of the Act, such information shall be submitted to the Secretary in the form of an amendment to its State plan for review and approval. Prior to submitting an amendment to its consolidated State plan or individual program State plan, the SEA must engage in timely and meaningful consultation, consistent with paragraph (b) of this section.

(h) *Revisions.* At least once every four years, an SEA must review and revise its approved consolidated State plan or individual program State plans. The SEA must submit its revisions to the Secretary for review and approval. In reviewing and revising its consolidated State plan or individual program State plan, each SEA must engage in timely and meaningful consultation, consistent with paragraph (b) of this section.

(i) *Optional consolidated State plan.* An SEA may submit either a consolidated State plan or an individual program State plan for any program identified in paragraph (j) of this section. An SEA that submits a consolidated State plan is not required to submit an individual program State plan for any of the programs to which the consolidated State plan applies.

(j) *Programs that may be included in a consolidated State plan.* (1) Under section 8302 of the Act, an SEA may include in a consolidated State plan any programs authorized by—

(i) Title I, part A: Improving Basic Programs Operated by State and Local Educational Agencies;

(ii) Title I, part C: Education of Migratory Children;

(iii) Title I, part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk;

(iv) Title II, part A: Supporting Effective Instruction;

(v) Title III, part A: Language Instruction for English Learners and Immigrant Students;

(vi) Title IV, part A: Student Support and Academic Enrichment Grants;

(vii) Title IV, part B: 21st Century Community Learning Centers; and

(viii) Title V, part B, Subpart 2: Rural and Low-Income School Program.

(2) In addition to the programs identified in paragraph (j)(1) of this section, under section 8302(a)(1)(B) of the Act, an SEA may also include in the consolidated State plan the following programs as designated by the Secretary—

(i) The Grants for State Assessments and Related Activities program under section 1201 of title I, part B of the Act.

(ii) The Education for Homeless Children and Youths program under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (McKinney-Vento).

(k) *Individual program State plan requirements.* An SEA that submits an individual program State plan for one or more of the programs listed in paragraph (j) of this section must address all State plan or application requirements applicable to such programs as outlined in the Act and applicable regulations, including all required statutory programmatic assurances. In addition to addressing the statutory and regulatory plan or application requirements for each individual program, an SEA that submits an individual program State plan—

(1) For title I, part A, must:

(i) Meet the educator equity requirements in § 299.18(c) in order to address section 1111(g)(1)(B) of the Act; and

(ii) Meet the schoolwide waiver requirements in § 299.19(c)(1) in order to implement section 1114(a)(1)(B) of the Act; and

(2) For title III, must meet the English learner requirements in § 299.19(c)(2) in order to address section 3113(b)(2) of the Act.

(l) *Compliance with program requirements.* Each SEA must administer all programs in accordance with all applicable statutes, regulations, program plans, and applications, and maintain documentation of this compliance.

(Authority: 20 U.S.C. 1221e–3, 7801(11), 7842, 7844, 7845)

§ 299.14 Requirements for the consolidated State plan.

(a) *Purpose.* Pursuant to section 8302 of the Act, the Department defines the procedures under which an SEA may submit a consolidated State plan for any or all of the programs listed in § 299.13(j).

(b) *Framework for the consolidated State plan.* Each consolidated State plan must address the requirements in §§ 299.15 through 299.19 for the following five components and their corresponding elements:

(1) Consultation and coordination.

(2) Challenging academic standards and academic assessments.

(3) Accountability, support, and improvement for schools.

(4) Supporting excellent educators.

(5) Supporting all students.

(c) *Performance management and technical assistance.* In its consolidated State plan, each State must describe its system of performance management for implementation of State and LEA plans for each component required under §§ 299.16 through 299.19. This description must include—

(1) The SEA's process for supporting the development of, review, and approval of the activities in LEA plans in accordance with statutory and regulatory requirements, including a description of how the SEA will determine if LEA activities are aligned with the specific needs of the LEA and the State's strategies described in its consolidated State plan.

(2) The SEA's plan, including strategies and timelines, to—

(i) Collect and use data and information, including input from stakeholders, to assess the quality of SEA and LEA implementation of strategies and progress toward improving student outcomes and meeting the desired program outcomes;

(ii) Monitor SEA and LEA implementation of included programs using the data in paragraph (c)(2)(i) of this section to ensure compliance with statutory and regulatory requirements; and

(iii) Continuously improve implementation of SEA and LEA strategies and activities that are not leading to satisfactory progress toward improving student outcomes and meeting the desired program outcomes; and

(3) The SEA's plan, including strategies and timelines, to provide differentiated technical assistance to LEAs and schools to support effective implementation of SEA, LEA, and other subgrantee strategies.

(Authority: 20 U.S.C. 1221e–3, 7842)

§ 299.15 Consultation and coordination.

(a) *Consultation.* In its consolidated State plan, each SEA must describe how it engaged in timely and meaningful consultation consistent with § 299.13(b) with stakeholders in the development of each of the four components identified in §§ 299.16 through 299.19 of its consolidated plan. The stakeholders must include the following individuals and entities and must reflect the geographic diversity of the State:

(1) The Governor, or appropriate officials from the Governor's office;

(2) Members of the State legislature;

(3) Members of the State board of education (if applicable);

(4) LEAs, including LEAs in rural areas;

(5) Representatives of Indian tribes located in the State;

(6) Teachers, principals, other school leaders, paraprofessionals, specialized instructional support personnel, and organizations representing such individuals;

(7) Charter school leaders, if applicable;

(8) Parents and families;

(9) Community-based organizations;

(10) Civil rights organizations, including those representing students with disabilities, English learners, and other historically underserved students;

(11) Institutions of higher education (IHEs);

(12) Employers; and

(13) The public.

(b) *Coordination.* In its consolidated State plan, each SEA must describe how it is coordinating its plans for administering the included programs, other programs authorized under the ESEA, as amended by the ESSA, and IDEA, the Rehabilitation Act, the Carl D. Perkins Career and Technical Education Act of 2006, the Workforce Innovation and Opportunity Act, the Head Start Act, the Child Care and Development Block Grant Act of 1990, the Education Sciences Reform Act of 2002, the Education Technical Assistance Act of 2002, the National Assessment of Educational Progress Authorization Act, and the Adult Education and Family Literacy Act.

(Authority: 20 U.S.C. 1221e–3, 6311, 7842)

§ 299.16 Challenging academic standards and academic assessments.

(a) *Challenging State academic standards.* In its consolidated State plan, each SEA must—

(1) Provide evidence at such time and in such manner specified by the Secretary that the State has adopted challenging academic content standards and aligned academic achievement standards in the required subjects and grades consistent with section 1111(b)(1)(A)–(D) of the Act;

(2) If the State has adopted alternate academic achievement standards for students with the most significant cognitive disabilities, provide evidence at such time and in such manner specified by the Secretary that those standards meet the requirements of section 1111(b)(1)(E) of the Act; and

(3) Provide evidence at such time and in such manner specified by the Secretary that the State has adopted English language proficiency standards under section 1111(b)(1)(F) of the Act that—

(i) Are derived from the four recognized domains of speaking, listening, reading, and writing;

(ii) Address the different proficiency levels of English learners; and

(iii) Are aligned with the State's challenging academic standards.

(b) *Academic assessments.* In its consolidated State plan, each SEA must—

(1) Identify the high-quality student academic assessments that the State is implementing under section 1111(b)(2) of the Act, including:

(A) High-quality student academic assessments in mathematics, reading or language arts, and science consistent with the requirements under section 1111(b)(2)(B) of the Act;

(B) Any assessments used under the exception for advanced middle school mathematics under section 1111(b)(2)(C)(iii) of the Act;

(C) Alternate assessments aligned with the challenging State academic standards and alternate academic achievement standards for students with the most significant cognitive disabilities;

(D) Uniform statewide assessment of English language proficiency, including reading, writing, speaking, and listening skills consistent with § 200.6(f)(3); and

(E) Any approved locally selected nationally recognized high school assessments consistent with § 200.3;

(2) Provide evidence at such time and in such manner specified by the Secretary that the State's assessments identified in paragraph (b)(1) of this section meet the requirements of section 1111(b)(2) of the Act;

(3) Describe its strategies to provide all students in the State the opportunity to be prepared for and to take advanced mathematics coursework in middle school consistent with section 1111(b)(2)(C) and § 200.5;

(4) Describe the steps it has taken to incorporate the principles of universal design for learning, to the extent feasible, in the development of its assessments, including any alternate assessments aligned with alternate academic achievement standards that the State administers consistent with sections 1111(b)(2)(B)(xiii) and 1111(b)(2)(D)(i)(IV) of the Act;

(5) Consistent with § 200.6, describe how it will ensure that the use of appropriate accommodations, if applicable, do not deny an English learner—

(A) The opportunity to participate in the assessment; and

(B) Any of the benefits from participation in the assessment that are afforded to students who are not English learners;

(6) Describe how it is complying with the requirements in § 200.6(f)(1)(ii)(B) through (E) related to assessments in languages other than English;

(7) Describe how the State will use formula grant funds awarded under section 1201 of the Act to pay the costs of development of the high-quality State assessments and standards adopted under section 1111(b) of the Act or, if a State has developed those assessments, to administer those assessments or carry out other assessment activities consistent with section 1201(a) of the Act.

(Authority: 20 U.S.C. 1221e–3, 6311(b), 7842)

§ 299.17 Accountability, support, and improvement for schools.

(a) *Long-term goals.* In its consolidated State plan, each SEA must describe its long-term goals, including how it established its ambitious long-term goals and measurements of interim progress for academic achievement, graduation rates, and English language proficiency, including its State-determined timeline for attaining such goals, consistent with the requirements in § 200.13 and section 1111(c)(4)(A) of the Act.

(b) *Accountability system.* In its consolidated State plan, each SEA must describe its statewide accountability system consistent with the requirements of section 1111(c) of the Act and § 200.12, including—

(1) The measures included in each of the indicators and how those measures meet the requirements described in § 200.14(c) through (e) and section 1111(c)(4)(B) of the Act for all students and separately for each subgroup of students used to meaningfully differentiate all public schools in the State;

(2) The subgroups of students from each major racial and ethnic group, consistent with § 200.16(a)(2);

(3) If applicable, the statewide uniform procedures for:

(i) Former English learners consistent with § 200.16(b)(1), and

(ii) Recently arrived English learners in the State to determine if an exception is appropriate for an English learner consistent with section 1111(b)(3) of the Act and § 200.16(b)(4);

(4) The minimum number of students that the State determines are necessary to be included in each of the subgroups of students consistent with § 200.17(a)(3);

(5) The State's system for meaningfully differentiating all public schools in the State, including public charter schools, consistent with the requirements of section 1111(c)(4)(C) of the Act and § 200.18, including—

(i) The distinct levels of school performance, and how they are calculated, under § 200.18(b)(3) on each indicator in the statewide accountability system;

(ii) The weighting of each indicator, including how certain indicators receive substantial weight individually and much greater weight in the aggregate, consistent with § 200.18(c) and (d); and

(iii) The summative ratings, including how they are calculated, that are provided to schools under § 200.18(b)(4);

(6) How the State is factoring the requirement for 95 percent student participation in assessments into its

system of annual meaningful differentiation of schools consistent with the requirements of § 200.15;

(7) The State's uniform procedure for averaging data across school years and combining data across grades as defined in § 200.20(a), if applicable;

(8) If applicable, how the State includes all public schools in the State in its accountability system if it is different from the methodology described in paragraph (b)(5), including—

(i) Schools in which no grade level is assessed under the State's academic assessment system (*e.g.*, P–2 schools), although the State is not required to administer a formal assessment to meet this requirement;

(ii) Schools with variant grade configurations (*e.g.*, P–12 schools);

(iii) Small schools in which the total number of students that can be included on any indicator under § 200.14 is less than the minimum number of students established by the State under § 200.17(a)(1*)*, consistent with a State's uniform procedures for averaging data under § 200.20(a), if applicable;

(iv) Schools that are designed to serve special populations (*e.g.*, students receiving alternative programming in alternative educational settings, students living in local institutions for neglected or delinquent children, students enrolled in State public schools for the blind, recently arrived English learners); and

(v) Newly opened schools that do not have multiple years of data, consistent with a State's uniform procedure for averaging data under § 200.20(a), if applicable.

(c) *Identification of schools.* In its consolidated State plan, each SEA must describe—

(1) The methodologies by which the State identifies schools for comprehensive support and improvement under section 1111(c)(4)(D)(i) of the Act and § 200.19(a), including:

(i) Lowest-performing schools;

(ii) Schools with low high school graduation rates; and

(iii) Schools with chronically low-performing subgroups;

(2) The uniform statewide exit criteria for schools identified for comprehensive support and improvement established by the State under section 1111(d)(3)(A)(i) of the Act and consistent with the requirements in § 200.21(f)(1), including the number of years over which schools are expected to meet such criteria;

(3) The State's methodology for identifying schools with "consistently underperforming" subgroups of students, including the definition and time period used by the State to determine consistent underperformance, under § 200.19(b)(1) and (c);

(4) The State's methodology for identifying additional targeted support schools with low-performing subgroups of students under § 200.19(b)(2); and

(5) The uniform exit criteria for schools requiring additional targeted support due to low-performing subgroups established by the State consistent with the requirements in § 200.22(f).

(d) *State support and improvement for low-performing schools.* In its consolidated State plan, each SEA must describe—

(1) Its process for making grants to LEAs under section 1003 of the Act consistent with the requirements of § 200.24 to serve schools implementing comprehensive or targeted support and improvement plans under section 1111(d) of the Act and consistent with the requirements in §§ 200.21 and 200.22;

(2) Its process to ensure effective development and implementation of school support and improvement plans, including evidence-based interventions, to hold all public schools accountable for student academic achievement and school success consistent with §§ 200.21 through 200.24, and, if applicable, the list of State-approved, evidence-based interventions for use in schools implementing comprehensive or targeted support and improvement plans;

(3) The more rigorous interventions required for schools identified for comprehensive support and improvement that fail to meet the State's exit criteria within a State-determined number of years consistent with section 1111(d)(3)(A)(i) of the Act and § 200.21(f);

(4) Its process, consistent with the requirements in section 1111(d)(3)(A)(ii) of the Act and § 200.23(a), for periodically reviewing and addressing resource allocation to ensure sufficient support for school improvement in each LEA in the State serving a significant number of schools identified for comprehensive support and improvement and in each LEA serving a significant number of schools implementing targeted support and improvement plans; and

(5) Other State-identified strategies, including timelines and funding sources from included programs consistent with allowable uses of funds provided under those programs, as applicable, to improve low-performing schools.

(e) *Performance management and technical assistance.* In addition to the requirements in § 299.14(c), each SEA must describe—

(1) Its process to approve, monitor, and periodically review LEA comprehensive support and improvement plans consistent with the requirements in section 1111(d)(1)(B)(v) and (vi) of the Act and § 200.21(e); and

(2) The technical assistance it will provide to each LEA in the State serving a significant number of schools identified for comprehensive and targeted support and improvement, including technical assistance related to selection of evidence-based interventions, consistent with the requirements in section 1111(d)(3)(A)(iii) of the Act and § 200.23(b).

(3) Any additional improvement actions the State may take consistent with § 200.23(c), including additional supports for or interventions in LEAs, or in any authorized public chartering agency consistent with State charter school law, with a significant number of schools identified for comprehensive support and improvement that are not meeting exit criteria or a significant number of schools identified for targeted support or improvement.

(Authority: 20 U.S.C. 1221e–3, 6303, 6311(c), (d), 7842)

§ 299.18 Supporting excellent educators.

(a) *Systems of educator development, retention, and advancement.* In its consolidated State plan, consistent with sections 2101 and 2102 of the Act, each SEA must describe its educator development, retention, and advancement systems, including, at a minimum—

(1) The State's system of certification and licensing of teachers and principals or other school leaders;

(2) The State's system to ensure adequate preparation of new educators, particularly for low-income and minority students; and

(3) The State's system of professional growth and improvement, which may include the use of an educator evaluation and support system, for educators that addresses induction, development, compensation, and advancement for teachers, principals, and other school leaders if the State has elected to implement such a system. Alternatively, the SEA must describe how it will ensure that each LEA has and is implementing a system of professional growth and improvement for teachers, principals, and other school leaders that addresses induction, development, compensation, and advancement.

(b) *Support for educators.* (1) In its consolidated State plan, each SEA must describe how it will use title II, part A funds and funds from other included programs, consistent with allowable uses of funds provided under those programs, to support State-level strategies designed to:

(i) Increase student achievement consistent with the challenging State academic standards;

(ii) Improve the quality and effectiveness of teachers and principals or other school leaders;

(iii) Increase the number of teachers and principals or other school leaders who are effective in improving student academic achievement in schools; and

(iv) Provide low-income and minority students greater access to effective teachers, principals, and other school leaders consistent with the provisions described in paragraph (c) of this section.

(2) In its consolidated State plan, each SEA must describe—

(i) How the SEA will improve the skills of teachers, principals, or other school leaders in identifying students with specific learning needs and providing instruction based on the needs of such students consistent with section 2101(d)(2)(J) of the Act, including strategies for teachers of, and principals or other school leaders in schools with:

(A) Low-income students;

(B) Lowest-achieving students;

(C) English learners;

(D) Children with disabilities;

(E) Children and youth in foster care;

(F) Migratory children, including preschool migratory children and migratory children who have dropped out of school;

(G) Homeless children and youths;

(H) Neglected, delinquent, and at-risk children identified under title I, part D of the Act;

(I) Immigrant children and youth;

(J) Students in LEAs eligible for grants under the Rural and Low-Income School Program under section 5221 of the Act;

(K) American Indian and Alaska Native students;

(L) Students with low literacy levels; and

(M) Students who are gifted and talented;

(ii) If the SEA or its LEAs plan to use funds under one or more of the included programs for this purpose, how the SEA will work with LEAs in the State to develop or implement State or local teacher, principal or other school leader evaluation and support systems consistent with section 2101(c)(4)(B)(ii) of the Act; and

(iii) If the SEA plans to use funds under one or more of the included programs for this purpose, how the State will improve educator preparation programs consistent with section 2101(d)(2)(M) of the Act.

(3) In its consolidated State plan, each SEA must describe its rationale for, and its timeline for the design and implementation of, the strategies identified under paragraph (b)(1) and (2) of this section.

(c) *Educator equity.* (1) Each SEA must demonstrate, consistent with section 1111(g)(1)(B) of the Act, whether low-income and minority students enrolled in schools that receive funds under title I, part A of the Act are taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers compared to non-low-income and non-minority students enrolled in schools not receiving funds under title I, part A of the Act in accordance with paragraph (c)(3) of this section.

(2) For the purposes of this section, each SEA must establish and provide in its State plan different definitions, using distinct criteria so that each provides useful information about educator equity and disproportionality rates, for each of the terms included in paragraphs (c)(2)(i) through (iii) of this section—

(i) A statewide definition of "ineffective teacher", or statewide guidelines for LEA definitions of "ineffective teacher", that differentiates between categories of teachers;

(ii) A statewide definition of "out-of-field teacher" consistent with § 200.37;

(iii) A statewide definition of "inexperienced teacher" consistent with § 200.37;

(iv) A statewide definition of "low-income student";

(v) A statewide definition of "minority student" that includes, at a minimum, race, color, and national origin, consistent with title VI of the Civil Rights Act of 1964; and

(vi) Such other definitions for any other key terms that a State elects to define and use for the purpose of making the demonstration required under paragraph (c)(1) of this section.

(3) For the purpose of making the demonstration required under paragraph (c)(1) of this section—

(i) *Rates.* Each SEA must annually calculate and report, such as through a State report card, statewide based on student level data, except as permitted under § 299.13(d)(3), the rates at which—

(A) Low-income students enrolled in schools receiving funds under title I, part A of the Act, are taught by—

(*1*) Ineffective teachers;

(*2*) Out-of-field teachers; and

(*3*) Inexperienced teachers; and

(B) Non-low-income students enrolled in schools not receiving funds under title I, part A of the Act, are taught by—

(*1*) Ineffective teachers;

(*2*) Out-of-field teachers; and

(*3*) Inexperienced teachers;

(C) Minority students enrolled in schools receiving funds under title I, part A of the Act are taught by—

(*1*) Ineffective teachers;

(*2*) Out-of-field teachers; and

(*3*) Inexperienced teachers; and

(D) Non-minority students enrolled in schools not receiving funds under title I, part A of the Act are taught by—

(*1*) Ineffective teachers;

(*2*) Out-of-field teachers; and

(*3*) Inexperienced teachers;

(ii) *Other rates.* Each SEA may annually calculate and report statewide at the student level, except as permitted under § 299.13(d)(3), the rates at which students represented by any other key terms that a State elects to define and use for the purpose of this section are taught by ineffective teachers, out-of-field teachers, and inexperienced teachers.

(iii) *Disproportionate Rates.* Each SEA must calculate and report the differences, if any, between the rates calculated in paragraph (c)(3)(A) and (B), and between the rates calculated in paragraph (c)(3)(C) and (D) of this section.

(4) Each SEA must publish and annually update—

(i) The rates and disproportionalities required under paragraph (c)(3) of this section;

(ii) The percentage of teachers categorized in each LEA at each effectiveness level established as part of the definition of "ineffective teacher" under paragraph (c)(2)(i) of this section, consistent with applicable State privacy policies;

(iii) The percentage of teachers categorized as out-of-field teachers consistent with § 200.37; and

(iv) The percentage of teachers categorized as inexperienced teachers consistent with § 200.37.

(v) The information required under paragraphs (c)(4)(i) through (iv) of this section in a manner that is easily accessible and comprehensible to the general public, available at least on a public Web site, and, to the extent practicable, provided in a language that parents of students enrolled in all schools in the State can understand, in compliance with the requirements under § 200.21(b)(1) through (3). If the information required under paragraphs (c)(4)(i) through (iv) is made available in ways other than on a public Web site, it must be provided in compliance with the requirements under § 200.21(b)(1) through (3).

(5) Each SEA must describe where it will publish and annually update the rates and disproportionalities calculated under paragraph (c)(3) of this section and report on the rates and disproportionalities in the manner described in paragraph (c)(4)(v) of this section.

(6) Each SEA that demonstrates, under paragraph (c)(1) of this section, that low-income or minority students enrolled in schools receiving funds under title I, part A of this Act are taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers must—

(i) Describe the root cause analysis, including the level of disaggregation of disproportionality data (*e.g.*, statewide, between districts, within district, and within school), that identifies the factor or factors causing or contributing to the disproportionate rates demonstrated under paragraph (c)(1) of this section; and

(ii) Provide its strategies, including timelines and funding sources, to eliminate the disproportionate rates demonstrated under paragraph (c)(1) of this section that—

(A) Is based on the root cause analysis required under paragraph (c)(6)(i) of this section; and

(B) Focuses on the greatest or most persistent rates of disproportionality demonstrated under paragraph (c)(1) of this section, including by prioritizing strategies to support any schools identified for comprehensive or targeted support and improvement under § 200.19 that are contributing to those disproportionate rates.

(7) To meet the requirements of paragraph (c)(6) of this section, an SEA may—

(i) Direct an LEA, including an LEA that contributes to the disproportionality demonstrated by the SEA in paragraph (c)(1) of this section, to use a portion of its title II, part A, funds in a manner that is consistent with allowable activities identified in section 2103(b) of the Act to provide low-income and minority students greater access to effective teachers and principals or other school leaders, and

(ii) Require an LEA to describe in its title II, part A plan or consolidated local plan how it will use title II, part A funds to address disproportionality in educator equity as described in this paragraph (c) and deny an LEA's application for title II, part A funds if an LEA fails to describe how it will address identified disproportionalities or fails to meet other local application requirements applicable to title II, part A.

(Authority: 20 U.S.C. 1221e–3, 6311(g), 6601, 6611(d), 8302)

§ 299.19 Supporting all students.

(a) *Well-rounded and supportive education for students.* (1) In its consolidated State plan, each SEA must describe its strategies, its rationale for the selected strategies, timelines, and how it will use funds under the programs included in its consolidated State plan and support LEA use of funds to ensure that all children have a significant opportunity to meet challenging State academic standards and career and technical standards, as applicable, and attain, at a minimum, a regular high school diploma consistent with § 200.34, for, at a minimum, the following:

(i) The continuum of a student's education from preschool through grade 12, including transitions from early childhood education to elementary school, elementary school to middle school, middle school to high school, and high school to post-secondary education and careers, in order to support appropriate promotion practices and decrease the risk of students dropping out;

(ii) Equitable access to a well-rounded education and rigorous coursework in subjects such as English, reading/language arts, writing, science, technology, engineering, mathematics, foreign languages, civics and government, economics, history, geography, computer science, music, career and technical education, health, physical education, and any other subjects in which female students, minority students, English learners, children with disabilities, and low-income students are underrepresented;

(iii) School conditions for student learning, including activities to reduce—

(A) Incidents of bullying and harassment;

(B) The overuse of discipline practices that remove students from the classroom, such as out-of-school suspensions and expulsions; and

(C) The use of aversive behavioral interventions that compromise student health and safety;

(iv) The effective use of technology to improve the academic achievement and digital literacy of all students;

(v) Parent, family, and community engagement;

(vi) The accurate identification of English learners and children with disabilities; and

(vii) Other State-identified strategies.

(2) In describing the strategies, rationale, timelines, and funding sources in paragraph (a)(1) of this section, each SEA must consider—

(i) The academic and non-academic needs of subgroups of students including—

(A) Low-income students.

(B) Lowest-achieving students.

(C) English learners.

(D) Children with disabilities.

(E) Children and youth in foster care.

(F) Migratory children, including preschool migratory children and migratory children who have dropped out of school.

(G) Homeless children and youths.

(H) Neglected, delinquent, and at-risk students identified under title I, part D of the Act.

(I) Immigrant children and youth.

(J) Students in LEAs eligible for grants under the Rural and Low-Income School program under section 5221 of the Act.

(K) American Indian and Alaska Native students.

(ii) Data and information on resource equity consistent with paragraph (a)(3) of this section.

(3) In its consolidated State plan, the SEA must use information and data on resource equity collected and reported under section 1111(h) of the Act and §§ 200.35 and 200.37 including a review of LEA-level budgeting and resource allocation related to—

(A) Per-pupil expenditures of Federal, State, and local funds;

(B) Educator qualifications as described in § 200.37;

(C) Access to advanced coursework; and

(D) The availability of preschool.

(4) In its consolidated State plan, each SEA must describe how it will use title IV, part A and part B funds, and other Federal funds—

(i) To support the State-level strategies described in paragraph (a)(1) of this section and other State-level strategies, as applicable; and

(ii) To ensure that, to the extent permitted under applicable law and regulations, the processes, procedures, and priorities used to award subgrants under an included program are consistent with the requirements of this section.

(b) *Performance management and technical assistance.* In addition to the requirements in § 299.14(c), each SEA must describe how it will use the information and data described in paragraph (a)(3) of this section to inform review and approval of LEA applications and technical assistance in the implementation of LEA plans.

(c) *Program-specific requirements*—(1) *Title I, part A.* Each SEA must describe the process and criteria it will use to waive the 40 percent schoolwide poverty threshold under section 1114(a)(1)(B) of the Act submitted by an LEA on behalf of a school, including how the SEA will ensure that the schoolwide program will best serve the needs of the lowest-achieving students in the school.

(2) *Title I, part C.* In its consolidated State plan, each SEA must describe—

(i) How the SEA and its local operating agencies (which may include LEAs) will—

(A) Establish and implement a system for the proper identification and recruitment of eligible migratory children on a statewide basis, including the identification and recruitment of preschool migratory children and migratory children who have dropped out of school, and how the SEA will verify and document the number of eligible migratory children aged 3 through 21 residing in the State on an annual basis;

(B) Assess the unique educational needs of migratory children, including preschool migratory children and migratory children who have dropped out of school, and other needs that must be met in order for migratory children to participate effectively in school;

(C) Ensure that the unique educational needs of migratory children, including preschool migratory children and migratory children who have dropped out of school, and other needs that must be met in order for migratory children to participate effectively in school, are identified and addressed through the full range of services that are available for migratory children from appropriate local, State, and Federal educational programs; and

(D) Use funds received under title I, part C to promote interstate and intrastate coordination of services for migratory children, including how the State will provide for educational continuity through the timely transfer of pertinent school records, including information on health, when children move from one school to another, whether or not such move occurs during the regular school year;

(ii) The unique educational needs of the State's migratory children, including preschool migratory children and migratory children who have dropped out of school, and other needs that must be met in order for migratory children to participate effectively in school, based on the State's most recent comprehensive needs assessment;

(iii) The current measurable program objectives and outcomes for title I, part C, and the strategies the SEA will pursue on a statewide basis to achieve such objectives and outcomes;

(iv) How it will ensure there is consultation with parents of migratory children, including parent advisory councils, at both the State and local level, in the planning and operation of title I, part C programs that span not less than one school year in duration consistent with section 1304(c)(3) of the Act;

(v) Its processes and procedures for ensuring that migratory children who meet the statutory definition of "priority for services" are given priority for title I, part C services, including—

(A) The specific measures and sources of data used to determine whether a migratory child meets each priority for services criteria;

(B) The delegation of responsibilities for documenting priority for services determinations and the provision of services to migratory children determined to be priority for services; and

(C) The timeline for making priority for services determinations, and communicating such information to title I, part C service providers.

(3) *Title III, part A.* Each SEA must describe its standardized entrance and exit procedures for English learners, consistent with section 3113(b)(2) of the Act. These procedures must include valid and reliable, objective criteria that are applied consistently across the State. At a minimum, the standardized exit criteria must—

(i) Include a score of proficient on the State's annual English language proficiency assessment;

(ii) Be the same criteria used for exiting students from the English learner subgroup for title I reporting and accountability purposes;

(iii) Not include performance on an academic content assessment; and

(iv) Be consistent with Federal civil rights obligations.

(4) *Title V, part B, subpart 2.* In its consolidated State plan, each SEA must provide its specific measurable program objectives and outcomes related to activities under the Rural and Low-Income School program, if applicable.

(5) *McKinney-Vento Education for Homeless Children and Youths program.* In its consolidated State plan, each SEA must describe—

(i) The procedures it will use to identify homeless children and youths in the State and assess their needs;

(ii) Programs for school personnel (including liaisons designated under section 722(g)(1)(J)(ii) of the McKinney-Vento Act, principals and other school leaders, attendance officers, teachers, enrollment personnel, and specialized instructional support personnel) to heighten the awareness of such school personnel of the specific needs of homeless children and youths, including such children and youths who are runaway and homeless youths;

(iii) Its procedures to ensure that—

(A) Disputes regarding the educational placement of homeless children and youths are promptly resolved;

(B) Youths described in section 725(2) of the McKinney-Vento Act and youths separated from the public school are identified and accorded equal access to appropriate secondary education and support services, including by identifying and removing barriers that prevent youths described in this paragraph from receiving appropriate credit for full or partial coursework satisfactorily completed while attending a prior school, in accordance with State, local, and school polices;

(C) Homeless children and youths have access to public preschool programs, administered by the SEA or LEA, as provided to other children in the State;

(D) Homeless children and youths who meet the relevant eligibility criteria do not face barriers to accessing academic and extracurricular activities; and

(E) Homeless children and youths who meet the relevant eligibility criteria are able to participate in Federal, State, and local nutrition programs; and

(iv) Its strategies to address problems with respect to the education of homeless children and youths, including problems resulting from enrollment delays and retention, consistent with section 722(g)(1)(H) and (I) of the McKinney-Vento Act.

(Authority: 20 U.S.C. 1221e–3, 6311(d), (g), 6394, 6823, 7113(c), 7842; 42 U.S.C. 11432(g))

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Part IV

Department of Homeland Security

U.S. Customs and Border Protection

Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers; Notice

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of intent to distribute offset for Fiscal Year 2016.

SUMMARY: Pursuant to the *Continued Dumping and Subsidy Offset Act of 2000,* this document is U.S. Customs and Border Protection's (CBP) notice of intent to distribute assessed antidumping or countervailing duties (known as the continued dumping and subsidy offset) for Fiscal Year 2016 in connection with countervailing duty orders, antidumping duty orders, or findings under the *Antidumping Act of 1921*. This document provides the instructions for affected domestic producers, or anyone alleging eligibility to receive a distribution, to file certifications to claim a distribution in relation to the listed orders or findings.

DATES: Certifications to obtain a continued dumping and subsidy offset under a particular order or finding must be received by August 1, 2016. Any certification received after August 1, 2016 will be denied, making claimants ineligible for the distribution.

ADDRESSES: Certifications and any other correspondence (whether by mail, or an express or courier service) must be addressed to the Acting Executive Assistant Commissioner, Enterprise Services, U.S. Customs and Border Protection, Revenue Division, Attention: CDSOA Team, 6650 Telecom Drive, Suite 100, Indianapolis, IN, 46278.

FOR FURTHER INFORMATION CONTACT: CDSOA Team, Revenue Division, 6650 Telecom Drive, Suite 100, Indianapolis, IN, 46278; telephone (317) 614–4462.

SUPPLEMENTARY INFORMATION:

Background

The *Continued Dumping and Subsidy Offset Act of 2000* (CDSOA) was enacted on October 28, 2000, as part of the *Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act,* 2001 (the "Act"). The provisions of the CDSOA are contained in title X (sections 1001–1003) of the Appendix of the Act (H.R. 5426).

The CDSOA amended title VII of the *Tariff Act of 1930* by adding a new section 754 (codified at 19 U.S.C. 1675c) in order to provide that assessed duties received pursuant to a countervailing duty order, an antidumping duty order, or a finding under the *Antidumping Act of 1921* will be distributed to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such an order or finding. The term "affected domestic producer" means any manufacturer, producer, farmer, rancher or worker representative (including associations of such persons) who:

(A) Was a petitioner or interested party in support of a petition with respect to which an antidumping order, a finding under the *Antidumping Act of 1921,* or a countervailing duty order has been entered;

(B) Remains in operation continuing to produce the product covered by the countervailing duty order, the antidumping duty order, or the finding under the *Antidumping Act of 1921;* and

(C) Has not been acquired by another company or business that is related to a company that opposed the antidumping or countervailing duty investigation that led to the order or finding (*e.g.,* opposed the petition or otherwise presented evidence in opposition to the petition).

The distribution that these parties may receive is known as the continued dumping and subsidy offset.

Section 7601(a) of the *Deficit Reduction Act of 2005* repealed 19 U.S.C. 1675c. According to section 7701 of the *Deficit Reduction Act,* the repeal takes effect as if enacted on October 1, 2005. However, section 7601(b) provides that all duties collected on an entry filed before October 1, 2007, must be distributed as if 19 U.S.C. 1675c had not been repealed by section 7601(a). The funds available for distribution were also affected by section 822 of the *Claims Resolution Act of 2010* and section 504 of the *Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010*.

Historically, the antidumping and countervailing duties assessed and received by CBP on CDSOA-subject entries, along with the interest assessed and received on those duties pursuant to 19 U.S.C. 1677g, were transferred to the CDSOA Special Account for distribution (66 FR 48546, Sept. 21, 2001) *see also* 19 CFR 159.64(e). Other types of interest, including delinquency interest that accrued pursuant to 19 U.S.C. 1505(d), equitable interest under common law, and interest under 19 U.S.C. 580, were not subject to distribution. *Id.*

Section 605 of the *Trade Facilitation and Trade Enforcement Act of 2015* (TFTEA) (Pub. L. 114–125, February 24, 2016), provides new authority for CBP to deposit into the CDSOA Special Account for distribution delinquency interest that accrued pursuant to 19 U.S.C. 1505(d), equitable interest under common law, and interest under 19 U.S.C. 580 for payments received on or after October 1, 2014, on CDSOA subject entries if the payment was made by a surety in connection with a customs bond pursuant to a court order or judgment, or a litigation settlement with the surety, including any payments made during the litigation by the surety with respect to the bond.

Surety payments received from October 1, 2014, through September 30, 2016, for which delinquency, equitable, and 19 U.S.C. 580 interest are subject to distribution under Section 605 of the TFTEA will be deposited into the Special Account during Fiscal Year 2016 for inclusion in the Fiscal Year 2016 distribution. Any domestic producer seeking distribution of interest as provided under Section 605 of the TFTEA for payments received from October 1, 2014, through September 30, 2016, must file a timely Fiscal Year 2016 certification. CBP will utilize the Fiscal Year 2016 certifications to determine each domestic producer's pro-rata share of the assessed duties received during Fiscal Year 2016, the assessed 19 U.S.C. 1677g interest received during Fiscal Year 2016, as well as the interest provided for under Section 605 of the TFTEA for payments received from October 1, 2014, through September 30, 2016.

On February 2, 2015, President Obama ordered the sequester of non-exempt budgetary resources for Fiscal Year 2016 pursuant to section 251A of the *Balanced Budget and Emergency Deficit Control Act of 1985,* as amended (80 FR 6645, February 6, 2015). To implement this sequester during Fiscal Year 2016, the calculation of the Office of Management and Budget (OMB) requires a reduction of 6.8 percent of the assessed duties and interest received in the CDSOA Special Account (account number 015–12–5688). OMB has concluded that any amounts sequestered in the CDSOA Special Account during Fiscal Year 2016 will become available in the subsequent fiscal year. *See* 2 U.S.C. 906(k)(6). As a result, CBP intends to include the funds that are temporarily reduced via sequester during Fiscal Year 2016 in the continued dumping and subsidy offset for Fiscal Year 2016, which will be distributed not later than 60 days after the first day of Fiscal Year 2017 in accordance with 19 U.S.C. 1675c(c). In other words, the continued dumping and subsidy offset that affected domestic producers receive for Fiscal Year 2016 will include the funds that were temporarily sequestered during Fiscal Year 2016.

Because of the statutory constraints in the assessments of antidumping and countervailing duties, as well as the additional time involved when the Government must initiate litigation to collect delinquent antidumping and countervailing duties, the CDSOA distribution process will be continued for an undetermined period. Consequently, the full impact of the CDSOA repeal on amounts available for distribution may be delayed for several years. It should also be noted that amounts distributed may be subject to recovery as a result of reliquidations, court actions, administrative errors, and other reasons.

List of Orders or Findings and Affected Domestic Producers

It is the responsibility of the U.S. International Trade Commission (USITC) to ascertain and timely forward to CBP a list of the affected domestic producers that are potentially eligible to receive an offset in connection with an order or finding. In this regard, it is noted that USITC has supplied CBP with the list of individual antidumping and countervailing duty cases, and the affected domestic producers associated with each case who are potentially eligible to receive an offset. This list appears at the end of this document.

A significant amount of litigation has challenged various provisions of the CDSOA, including the definition of the term "affected domestic producer." In two decisions the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) upheld the constitutionality of the support requirement contained in the CDSOA. Specifically, in *SKF USA Inc.* v. *United States Customs & Border Prot.*, 556 F.3d 1337 (Fed. Cir. 2009), the Federal Circuit held that the CDSOA's support requirement did not violate either the First or Fifth Amendment. The Supreme Court of the United States denied plaintiff's petition for certiorari, *SKF USA, Inc.* v. *United States Customs & Border Prot.*, 560 U.S. 903 (2010). Similarly, in *PS Chez Sidney, L.L.C.* v. *United States*, 409 Fed. Appx. 327 (Fed. Cir. 2010), the Federal Circuit summarily reversed the U.S. Court of International Trade's judgment that the support requirement was unconstitutional, allowing only plaintiff's non-constitutional claims to go forward. *See PS Chez Sidney, L.L.C.* v. *United States*, 684 F.3d 1374 (Fed. Cir. 2012). Furthermore, in two cases interpreting the CDSOA's language, the Federal Circuit concluded that a producer who never indicates support for a dumping petition by letter or through questionnaire response, despite the act of otherwise filling out a questionnaire, cannot be an affected domestic producer. *Ashley Furniture Indus.* v. *United States; Ethan Allen Global, Inc. v. United States*, 734 F.3d 1306 (Fed. Cir. 2013), *cert. denied*, 135 S. Ct. 72 (2014); *Giorgio Foods, Inc.* v. *United States et al.*, 785 F.3d 595 (Fed. Cir. 2015).

Domestic producers who are not on the USITC list but believe they nonetheless are eligible for a CDSOA distribution under one or more antidumping and/or countervailing duty cases are required, as are all potential claimants that expressly appear on the list, to properly file their certification(s) within 60 days after this notice is published. Such domestic producers must allege all other bases for eligibility in their certification(s). CBP will evaluate the merits of such claims in accordance with the relevant statutes, regulations, and decisions. Certifications that are not timely filed within the requisite 60 days and/or that fail to sufficiently establish a basis for eligibility will be summarily denied. Additionally, CBP may not make a final decision regarding a claimant's eligibility to receive funds until certain legal issues which may affect that claimant's eligibility are resolved. In these instances, CBP may withhold an amount of funds corresponding to the claimant's alleged *pro rata* share of funds from distribution pending the resolution of those legal issues.

It should also be noted that the Federal Circuit ruled in *Canadian Lumber Trade Alliance* v. *United States*, 517 F.3d 1319 (Fed. Cir. 2008), *cert. denied sub nom. United States Steel* v. *Canadian Lumber Trade Alliance*, 129 S. Ct. 344 (2008), that CBP was not authorized to distribute such antidumping and countervailing duties to the extent they were derived from goods from countries that are parties to the North American Free Trade Agreement (NAFTA). Due to this decision, CBP does not list cases related to NAFTA on the Preliminary Amounts Available report, and no distributions will be issued on these cases.

Regulations Implementing the CDSOA

It is noted that CBP published Treasury Decision (T.D.) 01–68 (Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers) in the **Federal Register** (66 FR 48546) on September 21, 2001, which was effective as of that date, in order to implement the CDSOA. The final rule added a new subpart F to part 159 of title 19, Code of Federal Regulations (19 CFR part 159, subpart F (§§ 159.61–159.64)). More specific guidance regarding the filing of certifications is provided in this notice in order to aid affected domestic producers and other domestic producers alleging eligibility ("claimants" or "domestic producers").

Notice of Intent To Distribute Offset

This document announces that CBP intends to distribute to affected domestic producers the assessed antidumping or countervailing duties that are available for distribution in Fiscal Year 2016 in connection with those antidumping duty orders or findings or countervailing duty orders that are listed in this document. All distributions will be issued by paper check to the address provided by the claimants. Section 159.62(a) of title 19, Code of Federal Regulations (19 CFR 159.62(a)) provides that CBP will publish such a notice of intention to distribute assessed duties at least 90 calendar days before the end of a fiscal year. Failure to publish the notice at least 90 calendar days before the end of the fiscal year will not affect an affected domestic producer's obligation to file a timely certification within 60 days after the notice is published. *See Dixon Ticonderoga* v. *United States*, 468 F.3d 1353, 1354 (Fed. Cir. 2006).

Certifications; Submission and Content

To obtain a distribution of the offset under a given order or finding, an affected domestic producer (and anyone alleging eligibility to receive a distribution) must submit a certification for each order or finding under which a distribution is sought, to CBP, indicating its desire to receive a distribution. To be eligible to obtain a distribution, certifications must be received by CBP no later than 60 calendar days after the date of publication of this notice of intent to distribute in the **Federal Register**. All certifications not received by the 60th day will not be eligible to receive a distribution.

As required by 19 CFR 159.62(b), this notice provides the case name and number of the order or finding concerned, as well as the specific instructions for filing a certification under § 159.63 to claim a distribution. Section 159.62(b) also provides that the dollar amounts subject to distribution that are contained in the Special Account for each listed order or finding are to appear in this notice. However, these dollar amounts were not available in time for inclusion in this publication.

The preliminary amounts will be posted on the CBP Web site (*http://www.cbp.gov*). However, the final amounts available for disbursement may be higher or lower than the preliminary amounts.

CBP will provide general information to claimants regarding the preparation of certification(s). However, it remains the sole responsibility of the domestic producer to ensure that the certification is correct, complete, and accurate so as to demonstrate the eligibility of the domestic producer for the distribution requested. Failure to ensure that the certification is correct, complete, and accurate as provided in this notice will result in the domestic producer not receiving a distribution and/or a demand for the return of funds.

Specifically, to obtain a distribution of the offset under a given order or finding, each potential claimant must timely submit a certification containing the required information detailed below as to the eligibility of the domestic producer (or anyone alleging eligibility) to receive the requested distribution and the total amount of the distribution that the domestic producer is claiming. Certifications should be submitted to the Acting Executive Assistant Commissioner, Enterprise Services, U.S. Customs and Border Protection, Revenue Division, Attention: CDSOA Team, 6650 Telecom Drive, Suite 100, Indianapolis, IN, 46278. The certification must enumerate the qualifying expenditures incurred by the domestic producer since the issuance of an order or finding and it must demonstrate that the domestic producer is eligible to receive a distribution as an affected domestic producer or allege another basis for eligibility. Any false statements made in connection with certifications submitted to CBP may give rise to liability under the *False Claims Act* (*see* 31 U.S.C. 3729–3733) and/or to criminal prosecution.

A successor to a company that was an affected domestic producer at the time of acquisition should consult 19 CFR 159.61(b)(1)(i). Any company that files a certification claiming to be the successor company to an affected domestic producer will be deemed to have consented to joint and several liability for the return of any overpayments arising under § 159.64(c)(3) that were previously paid to the predecessor. CBP may require the successor company to provide documents to support its eligibility to receive a distribution as set out in § 159.63(d). Additionally, any individual or company who purchases any portion of the operating assets of an affected domestic producer, a successor to an affected domestic producer, or an entity that otherwise previously received distributions may be jointly and severally liable for the return of any overpayments arising under § 159.64(c)(3) that were previously paid to the entity from which the operating assets were purchased or its predecessor, regardless of whether the purchasing individual or company is deemed a successor company for purposes of receiving distributions.

A member company (or its successor) of an association that appears on the list of affected domestic producers in this notice, where the member company itself does not appear on this list, should consult 19 CFR 159.61(b)(1)(ii). Specifically, for a certification under 19 CFR 159.61(b)(1)(ii), the claimant must name the association of which it is a member, specifically establish that it was a member of the association at the time the association filed the petition with the USITC, and establish that the claimant is a current member of the association. In order to promote accurate filings and more efficiently process the distributions, we offer the following guidance:

- If claimants are members of an association but the association does not file on their behalf, its association will need to provide its members with a statement that contains notarized company-specific information including dates of membership and an original signature from an authorized representative of the association.
- An association filing a certification on behalf of a member must also provide a power of attorney or other evidence of legal authorization from each of the domestic producers it is representing.
- Any association filing a certification on behalf of a member is responsible for verifying the legal sufficiency and accuracy of the member's financial records, which support the claim, and is responsible for that certification. As such, an association filing a certification on behalf of a member is jointly and severally liable with the member for repayment of any claim found to have been paid or overpaid in error.

The association may file a certification in its own right to claim an offset for that order or finding, but its qualifying expenditures would be limited to those expenditures that the association itself has incurred after the date of the order or finding in connection with the particular case.

As provided in 19 CFR 159.63(a), certifications to obtain a distribution of an offset must be received by CBP no later than 60 calendar days after the date of publication of the notice of intent in the **Federal Register**. All certifications received after the 60-day deadline will be summarily denied, making claimants ineligible for the distribution regardless of whether or not they appeared on the USITC list.

A list of all certifications received will be published on the CBP Web site (*http://www.cbp.gov*) shortly after the receipt deadline. This publication will not confirm acceptance or validity of the certification, but merely receipt of the certification. Due to the high volume of certifications, CBP is unable to respond to individual telephone or written inquiries regarding the status of a certification appearing on the list.

While there is no required format for a certification, CBP has developed a standard certification form to aid claimants in filing certifications. The certification form is available at *https://www.pay.gov* under the Public Form Name "Continued Dumping and Subsidy Offset Act of 2000 Certification" (CBP Form Number 7401) or by directing a web browser to *https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=8776895*. The certification form can be submitted electronically through *https://www.pay.gov* or by mail. All certifications not submitted electronically must include original signatures. Regardless of the format for a certification, per 19 CFR 159.63(b), the certification must contain the following information:

(1) The date of this **Federal Register** notice;

(2) The Commerce case number;

(3) The case name (producer/country);

(4) The name of the domestic producer and any name qualifier, if applicable (for example, any other name under which the domestic producer does business or is also known);

(5) The mailing address of the domestic producer (if a post office box, the physical street address must also appear) including, if applicable, a specific room number or department;

(6) The Internal Revenue Service (IRS) number (with suffix) of the domestic producer, employer identification number, or social security number, as applicable;

(7) The specific business organization of the domestic producer (corporation, partnership, sole proprietorship);

(8) The name(s) of any individual(s) designated by the domestic producer as the contact person(s) concerning the certification, together with the phone number(s), mailing address, and, if available, facsimile transmission number(s) and electronic mail (email) address(es) for the person(s). Correspondence from CBP may be

directed to the designated contact(s) by either mail or phone or both;

(9) The total dollar amount claimed;

(10) The dollar amount claimed by category, as described in the section below entitled "Amount Claimed for Distribution";

(11) A statement of eligibility, as described in the section below entitled "Eligibility to Receive Distribution"; and

(12) For certifications not submitted electronically through *https://www.pay.gov*, an original signature by an individual legally authorized to bind the producer.

Qualifying Expenditures That May Be Claimed for Distribution

Qualifying expenditures that may be offset under the CDSOA encompass those expenditures incurred by the domestic producer after issuance of an antidumping duty order or finding or a countervailing duty order, and prior to its termination, provided that such expenditures fall within certain categories. The CDSOA repeal language parallels the termination of an order or finding. Therefore, for duty orders or findings that have not been previously revoked, expenses must be incurred before October 1, 2007, to be eligible for offset. For duty orders or findings that have been revoked, expenses must be incurred before the effective date of the revocation to be eligible for offset. For example, assume for case A–331–802 certain frozen warm-water shrimp and prawns from Ecuador, that the order date is February 1, 2005, and that the revocation effective date is August 15, 2007. In this case, eligible expenditures would have to be incurred between February 1, 2005, and August 15, 2007.

For the convenience and ease of the domestic producers, CBP is providing guidance on what the agency takes into consideration when making a calculation for each of the following categories:

(1) Manufacturing facilities (Any facility used for the transformation of raw material into a finished product that is the subject of the related order or finding);

(2) Equipment (Goods that are used in a business environment to aid in the manufacturing of a product that is the subject of the related order or finding);

(3) Research and development (Seeking knowledge and determining the best techniques for production of the product that is the subject of the related order or finding);

(4) Personnel training (Teaching of specific useful skills to personnel, that will improve performance in the production process of the product that is the subject of the related order or finding);

(5) Acquisition of technology (Acquisition of applied scientific knowledge and materials to achieve an objective in the production process of the product that is the subject of the related order or finding);

(6) Health care benefits for employees paid for by the employer (Health care benefits paid to employees who are producing the specific product that is the subject of the related order or finding);

(7) Pension benefits for employees paid for by the employer (Pension benefits paid to employees who are producing the specific product that is the subject of the related order or finding);

(8) Environmental equipment, training, or technology (Equipment, training, or technology used in the production of the product that is the subject of the related order or finding, that will assist in preventing potentially harmful factors from affecting the environment);

(9) Acquisition of raw materials and other inputs (Purchase of unprocessed materials or other inputs needed for the production of the product that is the subject of the related order or finding); and

(10) Working capital or other funds needed to maintain production (Assets of a business that can be applied to its production of the product that is the subject of the related order or finding).

Amount Claimed for Distribution

In calculating the amount of the distribution being claimed as an offset, the certification must indicate:

(1) The total amount of any qualifying expenditures previously certified by the domestic producer, and the amount certified by category;

(2) The total amount of those expenditures which have been the subject of any prior distribution for the order or finding being certified under 19 U.S.C. 1675c; and

(3) The net amount for new and remaining qualifying expenditures being claimed in the current certification (the total amount previously certified as noted in item "(1)" above minus the total amount that was the subject of any prior distribution as noted in item "(2)" above). In accordance with 19 CFR 159.63(b)(2)(i)–(iii), CBP will deduct the amount of any prior distribution from the producer's claimed amount for that case. Total amounts disbursed by CBP under the CDSOA for some prior Fiscal Years are available on the CBP Web site.

Additionally, under 19 CFR 159.61(c), these qualifying expenditures must be related to the production of the same product that is the subject of the order or finding, with the exception of expenses incurred by associations which must be related to a specific case. Any false statements made to CBP concerning the amount of distribution being claimed as an offset may give rise to liability under the *False Claims Act* (*see* 31 U.S.C. 3729–3733) and/or to criminal prosecution.

Eligibility To Receive Distribution

As noted, the certification must contain a statement that the domestic producer desires to receive a distribution and is eligible to receive the distribution as an affected domestic producer or on another legal basis. Also, the domestic producer must affirm that the net amount certified for distribution does not encompass any qualifying expenditures for which distribution has previously been made (19 CFR 159.63(b)(3)(i)). Any false statements made in connection with certifications submitted to CBP may give rise to liability under the *False Claims Act* (*see* 31 U.S.C. 3729–3733) and/or to criminal prosecution.

Furthermore, under 19 CFR 159.63(b)(3)(ii), where a domestic producer files a separate certification for more than one order or finding using the same qualifying expenditures as the basis for distribution in each case, each certification must list all the other orders or findings where the producer is claiming the same qualifying expenditures.

Moreover, as required by 19 U.S.C. 1675c(b)(1) and 19 CFR 159.63(b)(3)(iii), the certification must include information as to whether the domestic producer remains in operation at the time the certifications are filed and continues to produce the product covered by the particular order or finding under which the distribution is sought. If a domestic producer is no longer in operation, or no longer produces the product covered by the order or finding, the producer will not be considered an affected domestic producer entitled to receive a distribution.

In addition, as required by 19 U.S.C. 1675c(b)(5) and 19 CFR 159.63(b)(3)(iii), the domestic producer must state whether it has been acquired by a company that opposed the investigation or was acquired by a business related to a company that opposed the investigation. If a domestic producer has been so acquired, the producer will not be considered an affected domestic producer entitled to receive a distribution. However, CBP may not make a final decision regarding a claimant's eligibility to receive funds until certain legal issues which may affect that claimant's eligibility are resolved. In these instances, CBP may withhold an amount of funds corresponding to the claimant's alleged *pro rata* share of funds from distribution pending the resolution of those legal issues.

The certification must be executed and dated by a party legally authorized to bind the domestic producer and it must state that the information contained in the certification is true and accurate to the best of the certifier's knowledge and belief under penalty of law, and that the domestic producer has records to support the qualifying expenditures being claimed (see section below entitled "Verification of Certification"). Moreover as provided in 19 CFR 159.64(b)(3), overpayments to affected domestic producers are recoverable by CBP and CBP reserves the right to use all available collection tools to recover overpayments, including but not limited to garnishments, court orders, administrative offset, enrollment in the Treasury Offset Program, and/or offset of tax refund payments. Overpayments may occur for a variety of reasons such as reliquidations, court actions, settlements, insufficient verification of a certification in response to an inquiry from CBP, and administrative errors. With diminished amounts available over time, the likelihood that these events will require the recovery of funds previously distributed will increase. As a result, domestic producers who receive distributions under the CDSOA may wish to set aside any funds received in case it is subsequently determined that an overpayment has occurred. CBP considers the submission of a certification and the negotiation of any distribution checks received as acknowledgements and acceptance of the claimant's obligation to return those funds upon demand.

Review and Correction of Certification

A certification that is submitted in response to this notice of intent to distribute and received within 60 calendar days after the date of publication of the notice in the **Federal Register** may, at CBP's sole discretion, be subject to review before acceptance to ensure that all informational requirements are complied with and that any amounts set forth in the certification for qualifying expenditures, including the amount claimed for distribution, appear to be correct. A certification that is found to be materially incorrect or incomplete will be returned to the domestic producer within 15 business days after the close of the 60 calendar-day filing period, as provided in 19 CFR 159.63(c). In making this determination, CBP will not speculate as to the reason for the error (*e.g.,* intentional, typographical, etc.). CBP must receive a corrected certification from the domestic producer and/or an association filing on behalf of an association member within 10 business days from the date of the original denial letter. Failure to receive a corrected certification within 10 business days will result in denial of the certification at issue. It is the sole responsibility of the domestic producer to ensure that the certification is correct, complete, and accurate so as to demonstrate the eligibility of the domestic producer to the distribution requested. Failure to ensure that the certification is correct, complete, and accurate will result in the domestic producer not receiving a distribution and/or a demand for the return of funds.

Verification of Certification

Certifications are subject to CBP's verification. The burden remains on each claimant to fully substantiate all elements of its certification. As such, claimants may be required to provide copies of additional records for further review by CBP. Therefore, parties are required to maintain, and be prepared to produce, records adequately supporting their claims for a period of five years after the filing of the certification (19 CFR 159.63(d)). The records must demonstrate that each qualifying expenditure enumerated in the certification was actually incurred, and they must support how the qualifying expenditures are determined to be related to the production of the product covered by the order or finding. Although CBP will accept comments and information from the public and other domestic producers, CBP retains complete discretion regarding the initiation and conduct of investigations stemming from such information. In the event that a distribution is made to a domestic producer from whom CBP later seeks verification of the certification and sufficient supporting documentation is not provided as determined by CBP, then the amounts paid to the affected domestic producer are recoverable by CBP as an overpayment. CBP reserves the right to use all available collection tools to recover overpayments, including but not limited to garnishments, court orders, administrative offset, enrollment in the Treasury Offset Program, and/or offset of tax refund payments. CBP considers the submission of a certification and the negotiation of any distribution checks received as acknowledgements and acceptance of the claimant's obligation to return those funds upon demand. Additionally, the submission of false statements, documents, or records in connection with a certification or verification of a certification may give rise to liability under the *False Claims Act* (*see* 31 U.S.C. 3729–3733) and/or to criminal prosecution.

Disclosure of Information in Certifications; Acceptance by Producer

The name of the claimant, the total dollar amount claimed by the party on the certification, as well as the total dollar amount that CBP actually disburses to that affected domestic producer as an offset, will be available for disclosure to the public, as specified in 19 CFR 159.63(e). To this extent, the submission of the certification is construed as an understanding and acceptance on the part of the domestic producer that this information will be disclosed to the public and a waiver of any right to privacy or non-disclosure. Additionally, a statement in a certification that this information is proprietary and exempt from disclosure may result in CBP's rejection of the certification.

List of Orders or Findings and Related Domestic Producers

The list of individual antidumping duty orders or findings and countervailing duty orders is set forth below together with the affected domestic producers associated with each order or finding who are potentially eligible to receive an offset. Those domestic producers not on the list must allege another basis for eligibility in their certification. Appearance of a domestic producer on the list is not a guarantee of distribution.

Dated: May 23, 2016.

Eugene H. Schied,

Assistant Commissioner, Office of Administration.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
A–122–006	AA1921–49 ..	Steel Jacks/Canada	Bloomfield Manufacturing (formerly Harrah Manufacturing).

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Seaburn Metal Products.
A–122–047	AA1921–127	Elemental Sulphur/Canada	Duval.
A–122–085	731–TA–3	Sugar and Syrups/Canada	Amstar Sugar.
A–122–401	731–TA–196	Red Raspberries/Canada	Northwest Food Producers' Association. Oregon Caneberry Commission. Rader Farms. Ron Roberts. Shuksan Frozen Food. Washington Red Raspberry Commission.
A–122–503	731–TA–263	Iron Construction Castings/Canada.	Alhambra Foundry Allegheny Foundry. Bingham & Taylor. Campbell Foundry. Charlotte Pipe & Foundry. Deeter Foundry. East Jordan Foundry. Le Baron Foundry. Municipal Castings. Neenah Foundry. Opelika Foundry. Pinkerton Foundry. Tyler Pipe. US Foundry & Manufacturing. Vulcan Foundry.
A–122–506	731–TA–276	Oil Country Tubular Goods/Canada.	CF&I Steel Copperweld Tubing. Cyclops. KPC. Lone Star Steel. LTV Steel. Maverick Tube. Quanex. US Steel.
A–122–601	731–TA–312	Brass Sheet and Strip/Canada	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products. United Steelworkers of America.
A–122–605	731–TA–367	Color Picture Tubes/Canada	Industrial Union Department, AFL–CIO. International Association of Machinists & Aerospace Workers. International Brotherhood of Electrical Workers. International Union of Electronic, Electrical, Technical, Salaried and Machine Workers. Philips Electronic Components Group. United Steelworkers of America. Zenith Electronics.
A–122–804	731–TA–422	Steel Rails/Canada	Bethlehem Steel. CF&I Steel.
A–122–814	731–TA–528	Pure Magnesium/Canada	Magnesium Corporation of America.
A–122–822	731–TA–614	Corrosion-Resistant Carbon Steel Flat Products/Canada.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
A–122–823	731–TA–575	Cut-to-Length Carbon Steel Plate/ Canada.	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A–122–830	731–TA–789	Stainless Steel Plate in Coils/Canada.	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless.
A–122–838	731–TA–928	Softwood Lumber/Canada	71 Lumber Co. Almond Bros Lbr Co. Anthony Timberlands. Balfour Lbr Co. Ball Lumber. Banks Lumber Company. Barge Forest Products Co. Beadles Lumber Co. Bearden Lumber. Bennett Lumber. Big Valley Band Mill. Bighorn Lumber Co Inc. Blue Mountain Lumber. Buddy Bean Lumber. Burgin Lumber Co Ltd. Burt Lumber Company. C&D Lumber Co. Ceda-Pine Veneer. Cersosimo Lumber Co Inc. Charles Ingram Lumber Co Inc. Charleston Heart Pine. Chesterfield Lumber. Chips. Chocorua Valley Lumber Co. Claude Howard Lumber. Clearwater Forest Industries. CLW Inc. CM Tucker Lumber Corp. Coalition for Fair Lumber Imports Executive Committee. Cody Lumber Co. Collins Pine Co. Collums Lumber. Columbus Lumber Co. Contoocook River Lumber. Conway Guiteau Lumber. Cornwright Lumber Co. Crown Pacific. Daniels Lumber Inc. Dean Lumber Co Inc. Deltic Timber Corporation. Devils Tower Forest Products. DiPrizio Pine Sales. Dorchester Lumber Co. DR Johnson Lumber. East Brainerd Lumber Co. East Coast Lumber Company. Eas-Tex Lumber. ECK Wood Products. Ellingson Lumber Co. Elliott Sawmilling. Empire Lumber Co. Evergreen Forest Products. Excalibur Shelving Systems Inc. Exley Lumber Co. FH Stoltze Land & Lumber Co.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			FL Turlington Lbr Co Inc.
			Fleming Lumber.
			Flippo Lumber.
			Floragen Forest Products.
			Frank Lumber Co.
			Franklin Timber Co.
			Fred Tebb & Sons.
			Fremont Sawmill.
			Frontier Resources.
			Garrison Brothers Lumber Co and Subsidiaries.
			Georgia Lumber.
			Gilman Building Products.
			Godfrey Lumber.
			Granite State Forest Prod Inc.
			Great Western Lumber Co.
			Greenville Molding Inc.
			Griffin Lumber Company.
			Guess Brothers Lumber.
			Gulf Lumber.
			Gulf States Paper.
			Guy Bennett Lumber.
			Hampton Resources.
			Hancock Lumber.
			Hankins Inc.
			Hankins Lumber Co.
			Harrigan Lumber.
			Harwood Products.
			Haskell Lumber Inc.
			Hatfield Lumber.
			Hedstrom Lumber.
			Herrick Millwork Inc.
			HG Toler & Son Lumber Co Inc.
			HG Wood Industries LLC.
			Hogan & Storey Wood Prod.
			Hogan Lumber Co.
			Hood Industries.
			HS Hofler & Sons Lumber Co Inc.
			Hubbard Forest Ind Inc.
			HW Culp Lumber Co.
			Idaho Veneer Co.
			Industrial Wood Products.
			Intermountain Res LLC.
			International Paper.
			J Franklin Jones Lumber Co Inc.
			Jack Batte & Sons Inc.
			Jasper Lumber Company.
			JD Martin Lumber Co.
			JE Jones Lumber Co.
			Jerry G Williams & Sons.
			JH Knighton Lumber Co.
			Johnson Lumber Company.
			Jordan Lumber & Supply.
			Joseph Timber Co.
			JP Haynes Lbr Co Inc.
			JV Wells Inc.
			JW Jones Lumber.
			Keadle Lumber Enterprises.
			Keller Lumber.
			King Lumber Co.
			Konkolville Lumber.
			Langdale Forest Products.
			Laurel Lumber Company.
			Leavitt Lumber Co.
			Leesville Lumber Co.
			Limington Lumber Co.
			Longview Fibre Co.
			Lovell Lumber Co Inc.
			M Kendall Lumber Co.
			Manke Lumber Co.
			Marriner Lumber Co.
			Mason Lumber.
			MB Heath & Sons Lumber Co.
			MC Dixon Lumber Co Inc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Mebane Lumber Co Inc. Metcalf Lumber Co Inc. Millry Mill Co Inc. Moose Creek Lumber Co. Moose River Lumber. Morgan Lumber Co Inc. Mount Yonah Lumber Co. Nagel Lumber. New Kearsarge Corp. New South. Nicolet Hardwoods. Nieman Sawmills SD. Nieman Sawmills WY. North Florida. Northern Lights Timber & Lumber. Northern Neck Lumber Co. Ochoco Lumber Co. Olon Belcher Lumber Co. Owens and Hurst Lumber. Packaging Corp of America. Page & Hill Forest Products. Paper, Allied-Industrial, Chemical and Energy Workers International Union. Parker Lumber. Pate Lumber Co Inc. PBS Lumber. Pedigo Lumber Co. Piedmont Hardwood Lumber Co. Pine River Lumber Co. Pinecrest Lumber Co. Pleasant River Lumber Co. Pleasant Western Lumber Inc. Plum Creek Timber. Pollard Lumber. Portac. Potlatch. Potomac Supply. Precision Lumber Inc. Pruitt Lumber Inc. R Leon Williams Lumber Co. RA Yancey Lumber. Rajala Timber Co. Ralph Hamel Forest Products. Randy D Miller Lumber. Rappahannock Lumber Co. Regulus Stud Mills Inc. Riley Creek Lumber. Roanoke Lumber Co. Robbins Lumber. Robertson Lumber. Roseburg Forest Products Co. Rough & Ready. RSG Forest Products. Rushmore Forest Products. RY Timber Inc. Sam Mabry Lumber Co. Scotch Lumber. SDS Lumber Co. Seacoast Mills Inc. Seago Lumber. Seattle-Snohomish. Seneca Sawmill. Shaver Wood Products. Shearer Lumber Products. Shuqualak Lumber. SI Storey Lumber. Sierra Forest Products. Sierra Pacific Industries. Sigfridson Wood Products. Silver City Lumber Inc. Somers Lbr & Mfg Inc. South & Jones. South Coast.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Southern Forest Industries Inc. Southern Lumber. St Laurent Forest Products. Starfire Lumber Co. Steely Lumber Co Inc. Stimson Lumber. Summit Timber Co. Sundance Lumber. Superior Lumber. Swanson Superior Forest Products Inc. Swift Lumber. Tamarack Mill. Taylor Lumber & Treating Inc. Temple-Inland Forest Products. Thompson River Lumber. Three Rivers Timber. Thrift Brothers Lumber Co Inc. Timco Inc. Tolleson Lumber. Toney Lumber. TR Miller Mill Co. Tradewinds of Virginia Ltd. Travis Lumber Co. Tree Source Industries Inc. Tri-State Lumber. TTT Studs. United Brotherhood of Carpenters and Joiners. Viking Lumber Co. VP Kiser Lumber Co. Walton Lumber Co Inc. Warm Springs Forest Products. Westvaco Corp. Wilkins, Kaiser & Olsen Inc. WM Shepherd Lumber Co. WR Robinson Lumber Co Inc. Wrenn Brothers Inc. Wyoming Sawmills. Yakama Forest Products. Younce & Ralph Lumber Co Inc. Zip-O-Log Mills Inc.
A–122–840	731–TA–954	Carbon and Certain Alloy Steel Wire Rod/Canada.	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills.
A–122–847	731–TA–1019B.	Hard Red Spring Wheat/Canada ..	North Dakota Wheat Commission.
A–201–504	731–TA–297	Porcelain-on-Steel Cooking Ware/Mexico.	General Housewares.
A–201–601	731–TA–333	Fresh Cut Flowers/Mexico	Burdette Coward. California Floral Council. Floral Trade Council. Florida Flower Association. Gold Coast Uanko Nursery. Hollandia Wholesale Florist. Manatee Fruit. Monterey Flower Farms. Topstar Nursery.
A–201–802	731–TA–451	Gray Portland Cement and Clinker/Mexico.	Alamo Cement. Blue Circle. BoxCrow Cement. Calaveras Cement. Capitol Aggregates. Centex Cement. Florida Crushed Stone. Gifford-Hill. Hanson Permanente Cement.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Ideal Basic Industries. Independent Workers of North America (Locals 49, 52, 89, 192 and 471). International Union of Operating Engineers (Local 12). National Cement Company of Alabama. National Cement Company of California. Phoenix Cement. Riverside Cement. Southdown. Tarmac America. Texas Industries.
A–201–805	731–TA–534	Circular Welded Nonalloy Steel Pipe/Mexico.	Allied Tube & Conduit. American Tube. Bull Moose Tube. Century Tube. CSI Tubular Products. Cyclops. Laclede Steel. LTV Tubular Products. Maruichi American. Sharon Tube. USX. Western Tube & Conduit. Wheatland Tube.
A–201–806	731–TA–547	Carbon Steel Wire Rope/Mexico ...	Bridon American. Macwhyte. Paulsen Wire Rope. The Rochester Corporation. United Automobile, Aerospace and Agricultural Implement Workers (Local 960). Williamsport. Wire-rope Works. Wire Rope Corporation of America.
A–201–809	731–TA–582	Cut-to-Length Carbon Steel Plate/Mexico.	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A–201–817	731–TA–716	Oil Country Tubular Goods/Mexico	IPSCO. Koppel Steel. Maverick Tube. Newport Steel. North Star Steel. US Steel. USS/Kobe.
A–201–820	731–TA–747	Fresh Tomatoes/Mexico	Accomack County Farm Bureau. Ad Hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, Tennessee and Virginia Tomato Growers. Florida Farm Bureau Federation. Florida Fruit and Vegetable Association. Florida Tomato Exchange. Florida Tomato Growers Exchange. Gadsden County Tomato Growers Association. South Carolina Tomato Association.
A–201–822	731–TA–802	Stainless Steel Sheet and Strip/Mexico.	Allegheny Ludlum. Armco. Bethlehem Steel. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America.
A–201–827	731–TA–848	Large-Diameter Carbon Steel Seamless Pipe/Mexico.	North Star Steel. Timken.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			US Steel. United Steelworkers of America. USS/Kobe.
A–201–828	731–TA–920	Welded Large Diameter Line Pipe/ Mexico.	American Cast Iron Pipe. Berg Steel Pipe. Bethlehem Steel. Napa Pipe/Oregon Steel Mills. Saw Pipes USA. Stupp. US Steel.
A–201–830	731–TA–958	Carbon and Certain Alloy Steel Wire Rod/Mexico.	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills.
A–201–831	731–TA–1027	Prestressed Concrete Steel Wire Strand/Mexico.	American Spring Wire Corp. Insteel Wire Products Co. Sivaco Georgia LLC. Strand Tech Martin Inc. Sumiden Wire Products Corp.
A–201–834	731–TA–1085	Purified Carboxymethylcellulose/ Mexico.	Aqualon Co a Division of Hercules Inc.
A–274–804	731–TA–961	Carbon and Certain Alloy Steel Wire Rod/Trinidad & Tobago.	AmeriSteel Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills.
A–301–602	731–TA–329	Fresh Cut Flowers/Colombia	Burdette Coward. California Floral Council. Floral Trade Council. Florida Flower Association. Gold Coast Uanko Nursery. Hollandia Wholesale Florist. Manatee Fruit. Monterey Flower Farms. Pajaro Valley Greenhouses. Topstar Nursery.
A–307–803	731–TA–519	Gray Portland Cement and Clinker/Venezuela.	Florida Crushed Stone Southdown. Tarmac America.
A–307–805	731–TA–537	Circular Welded Nonalloy Steel Pipe/Venezuela.	Allied Tube & Conduit American Tube. Bull Moose Tube. Century Tube. CSI Tubular Products. Cyclops. Laclede Steel. LTV Tubular Products. Maruichi American. Sharon Tube. USX. Western Tube & Conduit. Wheatland Tube.
A–307–807	731–TA–570	Ferrosilicon/Venezuela	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171 and 12646).

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
A–307–820	731–TA–931	Silicomanganese/Venezuela	Eramet Marietta. Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5–0639.
A–331–602	731–TA–331	Fresh Cut Flowers/Ecuador	Burdette Coward. California Floral Council. Floral Trade Council. Florida Flower Association. Gold Coast Uanko Nursery. Hollandia Wholesale Florist. Manatee Fruit. Monterey Flower Farms. Topstar Nursery.
A–337–803	731–TA–768	Fresh Atlantic Salmon/Chile	Atlantic Salmon of Maine. Cooke Aquaculture US. DE Salmon. Global Aqua USA. Island Aquaculture. Maine Coast Nordic. Scan Am Fish Farms. Treats Island Fisheries. Trumpet Island Salmon Farm.
A–337–804	731–TA–776	Preserved Mushrooms/Chile	LK Bowman. Modern Mushroom Farms. Monterey Mushrooms. Mount Laurel Canning. Mushroom Canning. Southwood Farms. Sunny Dell Foods. United Canning.
A–337–806	731–TA–948	Individually Quick Frozen Red Raspberries/Chile.	A&A Berry Farms. Bahler Farms. Bear Creek Farms. David Burns. Columbia Farms. Columbia Fruit. George Culp. Dobbins Berry Farm. Enfield. Firestone Packing. George Hoffman Farms. Heckel Farms. Wendell Kreder. Curt Maberry. Maberry Packing. Mike & Jean's. Nguyen Berry Farms. Nick's Acres. North Fork. Parson Berry Farm. Pickin 'N' Pluckin. Postage Stamp Farm. Rader. RainSweet. Scenic Fruit. Silverstar Farms. Tim Straub. Thoeny Farms. Townsend. Tsugawa Farms. Updike Berry Farms. Van Laeken Farms.
A–351–503	731–TA–262	Iron Construction Castings/Brazil	Alhambra Foundry. Allegheny Foundry. Bingham & Taylor. Campbell Foundry. Charlotte Pipe & Foundry. Deeter Foundry. East Jordan Foundry. Le Baron Foundry. Municipal Castings. Neenah Foundry. Opelika Foundry. Pinkerton Foundry.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Tyler Pipe.
			US Foundry & Manufacturing.
			Vulcan Foundry.
A–351–505	731–TA–278	Malleable Cast Iron Pipe Fittings/Brazil.	Grinnell.
			Stanley G Flagg.
			Stockham Valves & Fittings.
			U-Brand.
			Ward Manufacturing.
A–351–602	731–TA–308	Carbon Steel Butt-Weld Pipe Fittings/Brazil.	Ladish.
			Mills Iron Works.
			Steel Forgings.
			Tube Forgings of America.
			Weldbend.
A–351–603	731–TA–311	Brass Sheet and Strip/Brazil	Allied Industrial Workers of America.
			American Brass.
			Bridgeport Brass.
			Chase Brass & Copper.
			Hussey Copper.
			International Association of Machinists & Aerospace Workers
			Mechanics Educational Society of America (Local 56).
			The Miller Company.
			Olin.
			Revere Copper Products.
			United Steelworkers of America.
A–351–605	731–TA–326	Frozen Concentrated Orange Juice/Brazil.	Alcoma Packing.
			B&W Canning.
			Berry Citrus Products.
			Caulkins Indiantown Citrus.
			Citrus Belle.
			Citrus World.
			Florida Citrus Mutual.
A–351–804	731–TA–439	Industrial Nitrocellulose/Brazil	Hercules.
A–351–806	731–TA–471	Silicon Metal/Brazil	American Alloys.
			Globe Metallurgical.
			International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693).
			Oil, Chemical and Atomic Workers (Local 389).
			Silicon Metaltech.
			SiMETCO.
			Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60).
			United Steelworkers of America (Locals 5171, 8538 and 12646).
A–351–809	731–TA–532	Circular Welded Nonalloy Steel Pipe/Brazil.	Allied Tube & Conduit.
			American Tube.
			Bull Moose Tube.
			Century Tube.
			CSI Tubular Products.
			Cyclops.
			Laclede Steel.
			LTV Tubular Products.
			Maruichi American.
			Sharon Tube.
			USX.
			Western Tube & Conduit.
			Wheatland Tube.
A–351–817	731–TA–574	Cut-to-Length Carbon Steel Plate/Brazil.	Bethlehem Steel.
			California Steel Industries.
			CitiSteel USA Inc.
			Geneva Steel.
			Gulf States Steel.
			Inland Steel Industries.
			Lukens Steel.
			National Steel.
			Nextech.
			Sharon Steel.
			Theis Precision Steel.
			Thompson Steel.
			US Steel.
			United Steelworkers of America.
A–351–819	731–TA–636	Stainless Steel Wire Rod/Brazil	AL Tech Specialty Steel.
			Armco Steel.
			Carpenter Technology.
			Republic Engineered Steels.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Talley Metals Technology. United Steelworkers of America.
A–351–820	731–TA–641	Ferrosilicon/Brazil	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171 and 12646).
A–351–824	731–TA–671	Silicomanganese/Brazil	Elkem Metals. Oil, Chemical and Atomic Workers (Local 3–639).
A–351–825	731–TA–678	Stainless Steel Bar/Brazil	AL Tech Specialty Steel. Carpenter Technology. Crucible Specialty Metals. Electralloy. Republic Engineered Steels. Slater Steels. Talley Metals Technology. United Steelworkers of America.
A–351–826	731–TA–708	Seamless Pipe/Brazil	Koppel Steel. Quanex. Timken. United States Steel.
A–351–828	731–TA–806	Hot-Rolled Carbon Steel Flat Products/Brazil.	Acme Steel. Bethlehem Steel. California Steel Industries. Gallatin Steel. Geneva Steel. Gulf States Steel. Independent Steelworkers. IPSCO. Ispat/Inland. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–351–832	731–TA–953	Carbon and Certain Alloy Steel Wire Rod/Brazil.	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills.
A–351–837	731–TA–1024	Prestressed Concrete Steel Wire Strand/Brazil.	American Spring Wire Corp. Insteel Wire Products Co. Sivaco Georgia LLC. Strand Tech Martin Inc. Sumiden Wire Products Corp.
A–351–840	731–TA–1089	Certain Orange Juice/Brazil	A Duda & Sons Inc. Alico Inc. John Barnelt. Ben Hill Griffin Inc. Bliss Citrus. BTS A Florida General Partnership. Cain Groves. California Citrus Mutual. Cedar Haven Inc. Citrus World Inc. Clonts Groves Inc. Davis Enterprises Inc. D Edwards Dickinson.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Evans Properties Inc. Florida Citrus Commission. Florida Citrus Mutual. Florida Farm Bureau Federation. Florida Fruit & Vegetable Association. Florida State of Department of Citrus. Flying V Inc. GBS Groves Inc. Graves Brothers Co. H&S Groves. Hartwell Groves Inc. Holly Hill Fruit Products Co. Jack Melton Family Inc. K-Bob Inc. L Dicks Inc. Lake Pickett Partnership Inc. Lamb Revocable Trust Gerilyn Rebecca S Lamb Trustee. Lykes Bros Inc. Martin J McKenna. Orange & Sons Inc. Osgood Groves. William W Parshall. PH Freeman & Sons. Pierie Grove. Raymond & Melissa Pierie. Roper Growers Cooperative. Royal Brothers Groves. Seminole Tribe of Florida Inc. Silverman Groves/Rilla Cooper. Smoak Groves Inc. Sorrells Groves Inc. Southern Gardens Groves Corp. Southern Gardens Processing Corp. Southern Groves Citrus. Sun Ag Inc. Sunkist Growers Inc. Texas Citrus Exchange. Texas Citrus Mutual. Texas Produce Association. Travis Wise Management Inc. Uncle Matt's Fresh Inc. Varn Citrus Growers Inc
A–357–007	731–TA–157	Carbon Steel Wire Rod/Argentina	Atlantic Steel. Continental Steel. Georgetown Steel. North Star Steel. Raritan River Steel.
A–357–405	731–TA–208	Barbed Wire and Barbless Wire Strand/Argentina.	CF&I Steel. Davis Walker. Forbes Steel & Wire. Oklahoma Steel Wire.
A–357–802	731–TA–409	Light-Walled Rectangular Tube/Argentina.	Bull Moose Tube Hannibal Industries Harris Tube. Maruichi American. Searing Industries. Southwestern Pipe. Western Tube & Conduit.
A–357–804	731–TA–470	Silicon Metal/Argentina	American Alloys. Elkem Metals. Globe Metallurgical. International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693). Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. SIMETCO. SKW Alloys. Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60). United Steelworkers of America (Locals 5171, 8538 and 12646).
A–357–809	731–TA–707	Seamless Pipe/Argentina	Koppel Steel. Quanex. Timken.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			United States Steel.
A–357–810	731–TA–711	Oil Country Tubular Goods/Argentina.	IPSCO. Koppel Steel. Lone Star Steel. Maverick Tube. Newport Steel. North Star Steel. US Steel. USS/Kobe.
A–357–812	731–TA–892	Honey/Argentina	AH Meyer & Sons. Adee Honey Farms. Althoff Apiaries. American Beekeeping Federation. American Honey Producers Association. Anderson Apiaries. Arroyo Apiaries. Artesian Honey Producers. B Weaver Apiaries. Bailey Enterprises. Barkman Honey. Basler Honey Apiary. Beals Honey. Bears Paw Apiaries. Beaverhead Honey. Bee Biz. Bee Haven Honey. Belliston Brothers Apiaries. Big Sky Honey. Bill Rhodes Honey. Richard E Blake. Curt Bronnenbery. Brown's Honey Farms. Brumley's Bees. Buhmann Apiaries. Carys Honey Farms. Chaparrel Honey. Charles Apiaries. Mitchell Charles. Collins Honey. Conor Apiaries. Coy's Honey Farm. Dave Nelson Apiaries. Delta Bee. Eisele's Pollination & Honey. Ellingsoa's. Elliott Curtis & Sons. Charles L Emmons, Sr. Gause Honey. Gene Brandi Apiaries. Griffith Honey. Haff Apiaries. Hamilton Bee Farms. Hamilton Honey. Happie Bee. Harvest Honey. Harvey's Honey. Hiatt Honey. Hoffman Honey. Hollman Apiaries. Honey House. Honeybee Apiaries. Gary M Honl. Rand William Honl and Sydney Jo Honl. James R & Joann Smith Trust. Jaynes Bee Products. Johnston Honey Farms. Larry Johnston. Ke-An Honey. Kent Honeybees. Lake-Indianhead Honey Farms. Lamb's Honey Farm. Las Flores Apiaries. Mackrill Honey Farms & Sales.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Raymond Marquette. Mason & Sons Honey. McCoy's Sunny South Apiaries. Merrimack Valley Apiaries & Evergreen Honey. Met 2 Honey Farm. Missouri River Honey. Mitchell Brothers Honey. Monda Honey Farm. Montana Dakota Honey. Northern Bloom Honey. Noye's Apiaries. Oakes Honey. Oakley Honey Farms. Old Mill Apiaries. Opp Honey. Oro Dulce. Peterson's "Naturally Sweet" Honey. Potoczak Bee Farms. Price Apiaries. Pure Sweet Honey Farms. Robertson Pollination Service. Robson Honey. William Robson. Rosedale Apiaries. Ryan Apiaries. Schmidt Honey Farms. Simpson Apiaries. Sioux Honey Association. Smoot Honey. Solby Honey. Stahlman Apiaries. Steve E Parks Apiaries. Stroope Bee & Honey. T&D Honey Bee. Talbott's Honey. Terry Apiaries. Thompson Apiaries. Triple A Farm. Tropical Blossom Honey. Tubbs Apiaries. Venable Wholesale. Walter L Wilson Buzz 76 Apiaries. Wiebersiek Honey Farms. Wilmer Farms. Brent J Woodworth. Wooten's Golden Queens. Yaddof Apiaries.
A–357–814	731–TA–898	Hot-Rolled Steel Products/Argentina.	Bethlehem Steel Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–401–040	AA1921–114	Stainless Steel Plate/Sweden	Jessop Steel.
A–401–601	731–TA–316	Brass Sheet and Strip/Sweden	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products. United Steelworkers of America.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
A–401–603	731–TA–354	Stainless Steel Hollow Products/Sweden.	AL Tech Specialty Steel. Allegheny Ludlum Steel. ARMCO. Carpenter Technology. Crucible Materials. Damacus Tubular Products. Specialty Tubing Group.
A–401–801	731–TA–397–A.	Ball Bearings/Sweden	Barden Corp. Emerson Power Transmission. Kubar Bearings. MPB. Rollway Bearings. Torrington.
A–401–801	731–TA–397–B.	Cylindrical Roller Bearings/Sweden.	Barden Corp. Emerson Power Transmission. MPB. Rollway Bearings. Torrington.
A–401–805	731–TA–586	Cut-to-Length Carbon Steel Plate/Sweden.	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A–401–806	731–TA–774	Stainless Steel Wire Rod/Sweden	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–401–808	731–TA–1087	Purified Carboxymethylcellulose/Sweden.	Aqualon Co a Division of Hercules Inc.
A–403–801	731–TA–454	Fresh and Chilled Atlantic Salmon/Norway.	Heritage Salmon. The Coalition for Fair Atlantic Salmon Trade.
A–405–802	731–TA–576	Cut-to-Length Carbon Steel Plate/Finland.	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A–405–803	731–TA–1084	Purified Carboxymethylcellulose/Finland.	Aqualon Co a Division of Hercules Inc.
A–412–801	731–TA–399–A.	Ball Bearings/United Kingdom	Barden Corp. Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co. MPB. Rexnord Inc. Rollway Bearings. Torrington.
A–412–801	731–TA–399–B.	Cylindrical Roller Bearings/United Kingdom.	Barden Corp. Emerson Power Transmission. MPB. Rollway Bearings. Torrington.
A–412–803	731–TA–443	Industrial Nitrocellulose/United Kingdom.	Hercules.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
A–412–805	731–TA–468	Sodium Thiosulfate/United Kingdom.	Calabrian.
A–412–814	731–TA–587	Cut-to-Length Carbon Steel Plate/ United Kingdom.	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A–412–818	731–TA–804	Stainless Steel Sheet and Strip/ United Kingdom.	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A–412–822	731–TA–918	Stainless Steel Bar/United Kingdom.	Carpenter Technology. Crucible Specialty Metals. Electralloy. Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
A–421–701	731–TA–380	Brass Sheet and Strip/Netherlands	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. North Coast Brass & Copper. Olin. Pegg Metals. Revere Copper Products. United Steelworkers of America.
A–421–804	731–TA–608	Cold-Rolled Carbon Steel Flat Products/Netherlands.	Armco Steel. Bethlehem Steel. California Steel Industries. Gulf States Steel. Inland Steel Industries. LTV Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A–421–805	731–TA–652	Aramid Fiber/Netherlands	E I du Pont de Nemours.
A–421–807	731–TA–903	Hot-Rolled Steel Products/Netherlands.	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–421–811	731–TA–1086	Purified Carboxymethylcellulose/ Netherlands.	Aqualon Co a Division of Hercules Inc.
A–423–077	AA1921–198	Sugar/Belgium	Florida Sugar Marketing and Terminal Association.
A–423–602	731–TA–365	Industrial Phosphoric Acid/Belgium	Albright & Wilson. FMC. Hydrite Chemical. Monsanto. Stauffer Chemical.
A–423–805	731–TA–573	Cut-to-Length Carbon Steel Plate/ Belgium.	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A–423–808	731–TA–788	Stainless Steel Plate in Coils/Belgium.	Allegheny Ludlum. Armco Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
A–427–001	731–TA–44	Sorbitol/France	Lonza. Pfizer.
A–427–009	731–TA–96	Industrial Nitrocellulose/France	Hercules.
A–427–078	AA1921–199	Sugar/France	Florida Sugar Marketing and Terminal Association.
A–427–098	731–TA–25	Anhydrous Sodium Metasilicate/ France.	PQ.
A–427–602	731–TA–313	Brass Sheet and Strip/France	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products. United Steelworkers of America.
A–427–801	731–TA–392–A.	Ball Bearings/France	Barden Corp. Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co. MPB. Rexnord Inc. Rollway Bearings. Torrington.
A–427–801	731–TA–392–B.	Cylindrical Roller Bearings/France	Barden Corp. Emerson Power Transmission. MPB. Rollway Bearings. Torrington.
A–427–801	731–TA–392–C.	Spherical Plain Bearings/France	Barden Corp. Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co. Rexnord Inc. Rollway Bearings.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Torrington.
A–427–804	731–TA–553	Hot-Rolled Lead and Bismuth Carbon Steel. Products/France	Bethlehem Steel Inland Steel Industries. USS/Kobe Steel.
A–427–808	731–TA–615	Corrosion-Resistant Carbon Steel Flat Products/France.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A–427–811	731–TA–637	Stainless Steel Wire Rod/France	AL Tech Specialty Steel. Armco Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–427–814	731–TA–797	Stainless Steel Sheet and Strip/France.	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A–427–816	731–TA–816	Cut-to-Length Carbon Steel Plate/France.	Bethlehem Steel. Geneva Steel. IPSCO Steel. National Steel. US Steel. United Steelworkers of America.
A–427–818	731–TA–909	Low Enriched Uranium/France	United States Enrichment Corp. USEC Inc.
A–427–820	731–TA–913	Stainless Steel Bar/France	Carpenter Technology. Crucible Specialty Metals. Electralloy. Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
A–428–082	AA1921–200	Sugar/Germany	Florida Sugar Marketing and Terminal Association.
A–428–602	731–TA–317	Brass Sheet and Strip/Germany	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace. Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products. United Steelworkers of America.
A–428–801	731–TA–391–A.	Ball Bearings/Germany	Barden Corp. Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			MPB. Rexnord Inc. Rollway Bearings. Torrington.
A–428–801	731–TA–391–B.	Cylindrical Roller Bearings/Germany.	Barden Corp. Emerson Power Transmission. MPB. Rollway Bearings. Torrington.
A–428–801	731–TA–391–C.	Spherical Plain Bearings/Germany	Barden Corp. Emerson Power Transmission. Rollway Bearings. Torrington.
A–428–802	731–TA–419	Industrial Belts/Germany	The Gates Rubber Company. The Goodyear Tire and Rubber Company.
A–428–803	731–TA–444	Industrial Nitrocellulose/Germany	Hercules.
A–428–807	731–TA–465	Sodium Thiosulfate/Germany	Calabrian.
A–428–814	731–TA–604	Cold-Rolled Carbon Steel Flat Products/Germany.	Armco Steel. Bethlehem Steel. California Steel Industries. Gulf States Steel. Inland Steel Industries. LTV Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A–428–815	731–TA–616	Corrosion-Resistant Carbon Steel Flat Products/. Germany	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A–428–816	731–TA–578	Cut-to-Length Carbon Steel Plate/Germany.	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A–428–820	731–TA–709	Seamless Pipe/Germany	Koppel Steel. Quanex. Timken.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			United States Steel.
A–428–821	731–TA–736	Large Newspaper Printing Presses/Germany.	Rockwell Graphics Systems.
A–428–825	731–TA–798	Stainless Steel Sheet and Strip/Germany.	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A–428–830	731–TA–914	Stainless Steel Bar/Germany	Carpenter Technology. Crucible Specialty Metals. Electralloy. Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
A–437–601	731–TA–341	Tapered Roller Bearings/Hungary	L&S Bearing. Timken. Torrington.
A–437–804	731–TA–426	Sulfanilic Acid/Hungary	Nation Ford Chemical.
A–447–801	731–TA–340C.	Solid Urea/Estonia	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A–449–804	731–TA–878	Steel Concrete Reinforcing Bar/Latvia.	AB Steel Mill Inc. AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. Cascade Steel Rolling Mills Inc. CMC Steel Group. Co-Steel Inc. Marion Steel. North Star Steel Co. Nucor Steel. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel. TAMCO. TXI-Chaparral Steel Co.
A–451–801	731–TA–340D.	Solid Urea/Lithuania	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A–455–802	731–TA–583	Cut-to-Length Carbon Steel Plate/Poland.	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A–455–803	731–TA–880	Steel Concrete Reinforcing Bar/Poland.	AB Steel Mill Inc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			AmeriSteel.
			Auburn Steel.
			Birmingham Steel.
			Border Steel.
			Cascade Steel Rolling Mills Inc.
			CMC Steel Group.
			Co-Steel Inc.
			Marion Steel.
			North Star Steel Co.
			Nucor Steel.
			Rebar Trade Action Coalition.
			Riverview Steel.
			Sheffield Steel.
			TAMCO.
			TXI-Chaparral Steel Co.
A–469–007	731–TA–126	Potassium Permanganate/Spain ...	Carus Chemical.
A–469–803	731–TA–585	Cut-to-Length Carbon Steel Plate/Spain.	Bethlehem Steel.
			California Steel Industries.
			Geneva Steel.
			Gulf States Steel.
			Inland Steel Industries.
			Lukens Steel.
			National Steel.
			Nextech.
			Sharon Steel.
			Theis Precision Steel.
			Thompson Steel.
			US Steel.
			United Steelworkers of America.
A–469–805	731–TA–682	Stainless Steel Bar/Spain	AL Tech Specialty Steel.
			Carpenter Technology.
			Crucible Specialty Metals.
			Electralloy.
			Republic Engineered Steels.
			Slater Steels.
			Talley Metals Technology.
			United Steelworkers of America.
A–469–807	731–TA–773	Stainless Steel Wire Rod/Spain	AL Tech Specialty Steel.
			Carpenter Technology.
			Republic Engineered Steels.
			Talley Metals Technology.
			United Steelworkers of America.
A–469–810	731–TA–890	Stainless Steel Angle/Spain	Slater Steels.
			United Steelworkers of America.
A–469–814	731–TA–1083	Chlorinated Isocyanurates/Spain ..	BioLab Inc.
			Clearon Corp.
			Occidental Chemical Corp.
A–471–806	731–TA–427	Sulfanilic Acid/Portugal	Nation Ford Chemical.
A–475–059	AA1921–167	Pressure-Sensitive Plastic Tape/Italy.	Minnesota Mining & Manufacturing.
A–475–601	731–TA–314	Brass Sheet and Strip/Italy	Allied Industrial Workers of America.
			American Brass.
			Bridgeport Brass.
			Chase Brass & Copper.
			Hussey Copper.
			International Association of Machinists & Aerospace.
			Workers.
			Mechanics Educational Society of America (Local 56).
			The Miller Company.
			Olin.
			Revere Copper Products.
			United Steelworkers of America.
A–475–703	731–TA–385	Granular Polytetrafluoroethylene/Italy.	E I du Pont de Nemours.
			ICI Americas.
A–475–801	731–TA–393–A.	Ball Bearings/Italy	Barden Corp.
			Emerson Power Transmission.
			Kubar Bearings.
			McGill Manufacturing Co.
			MPB.
			Rexnord Inc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Rollway Bearings. Torrington.
A–475–801	731–TA–393–B.	Cylindrical Roller Bearings/Italy	Barden Corp. Emerson Power Transmission. MPB. Rollway Bearings. Torrington.
A–475–802	731–TA–413	Industrial Belts/Italy	The Gates Rubber Company. The Goodyear Tire and Rubber Company.
A–475–811	731–TA–659	Grain-Oriented Silicon Electrical Steel/Italy.	Allegheny Ludlum. Armco Steel. Butler Armco Independent Union. United Steelworkers of America. Zanesville Armco Independent Union.
A–475–814	731–TA–710	Seamless Pipe/Italy	Koppel Steel. Quanex. Timken. United States Steel.
A–475–816	731–TA–713	Oil Country Tubular Goods/Italy	Bellville Tube. IPSCO. Koppel Steel. Lone Star Steel. Maverick Tube. Newport Steel. North Star Steel. US Steel. USS/Kobe.
A–475–818	731–TA–734	Pasta/Italy	A Zerega's Sons. American Italian Pasta. Borden. D Merlino & Sons. Dakota Growers Pasta. Foulds. Gilster-Mary Lee. Gooch Foods. Hershey Foods. LaRinascente Macaroni Co. Pasta USA. Philadelphia Macaroni. ST Specialty Foods.
A–475–820	731–TA–770	Stainless Steel Wire Rod/Italy	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–475–822	731–TA–790	Stainless Steel Plate in Coils/Italy	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
A–475–824	731–TA–799	Stainless Steel Sheet and Strip/Italy.	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A–475–826	731–TA–819	Cut-to-Length Carbon Steel Plate/Italy.	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. US Steel. United Steelworkers of America.
A–475–828	731–TA–865	Stainless Steel Butt-Weld Pipe Fittings/Italy.	Flo-Mac Inc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Gerlin. Markovitz Enterprises. Shaw Alloy Piping Products. Taylor Forge Stainless.
A–475–829	731–TA–915	Stainless Steel Bar/Italy	Carpenter Technology. Crucible Specialty Metals. Electralloy. Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
A–479–801	731–TA–445	Industrial Nitrocellulose/Yugoslavia	Hercules.
A–484–801	731–TA–406	Electrolytic Manganese Dioxide/Greece.	Chemetals. Kerr-McGee. Rayovac.
A–485–601	731–TA–339	Solid Urea/Romania	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A–485–602	731–TA–345	Tapered Roller Bearings/Romania	L&S Bearing. Timken. Torrington.
A–485–801	731–TA–395	Ball Bearings/Romania	Barden Corp. Emerson Power Transmission. Kubar Bearings. MPB. Rollway Bearings. Torrington.
A–485–803	731–TA–584	Cut-to-Length Carbon Steel Plate/Romania.	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
A–485–805	731–TA–849	Small-Diameter Carbon Steel Seamless Pipe/. Romania	Koppel Steel. North Star Steel. Sharon Tube. Timken. US Steel. United Steelworkers of America. USS/Kobe. Vision Metals' Gulf States Tube.
A–485–806	731–TA–904	Hot-Rolled Steel Products/Romania.	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–489–501	731–TA–273	Welded Carbon Steel Pipe and Tube/Turkey.	Allied Tube & Conduit.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			American Tube.
			Bernard Epps.
			Bock Industries.
			Bull Moose Tube.
			Central Steel Tube.
			Century Tube.
			Copperweld Tubing.
			Cyclops.
			Hughes Steel & Tube.
			Kaiser Steel.
			Laclede Steel.
			Maruichi American.
			Maverick Tube.
			Merchant Metals.
			Phoenix Steel.
			Pittsburgh Tube.
			Quanex.
			Sharon Tube.
			Southwestern Pipe.
			UNR-Leavitt.
			Welded Tube.
			Western Tube & Conduit.
			Wheatland Tube.
A–489–602	731–TA–364	Aspirin/Turkey	Dow Chemical.
			Monsanto.
			Norwich-Eaton.
A–489–805	731–TA–735	Pasta/Turkey	A Zerega's Sons.
			American Italian Pasta.
			Borden.
			D Merlino & Sons.
			Dakota Growers Pasta.
			Foulds.
			Gilster-Mary Lee.
			Gooch Foods.
			Hershey Foods.
			LaRinascente Macaroni Co.
			Pasta USA.
			Philadelphia Macaroni.
			ST Specialty Foods.
A–489–807	731–TA–745	Steel Concrete Reinforcing Bar/Turkey.	AmeriSteel.
			Auburn Steel.
			Birmingham Steel.
			Commercial Metals.
			Marion Steel.
			New Jersey Steel.
A–507–502	731–TA–287	Raw In-Shell Pistachios/Iran	Blackwell Land.
			California Pistachio Orchard.
			Keenan Farms.
			Kern Pistachio Hulling & Drying.
			Los Ranchos de Poco Pedro.
			Pistachio Producers of California.
			TM Duche Nut.
A–508–604	731–TA–366	Industrial Phosphoric Acid/Israel	Albright & Wilson.
			FMC.
			Hydrite Chemical.
			Monsanto.
			Stauffer Chemical.
A–533–502	731–TA–271	Welded Carbon Steel Pipe and Tube/India.	Allied Tube & Conduit.
			American Tube.
			Bernard Epps.
			Bock Industries.
			Bull Moose Tube.
			Central Steel Tube.
			Century Tube.
			Copperweld Tubing.
			Cyclops.
			Hughes Steel & Tube.
			Kaiser Steel.
			Laclede Steel.
			Maruichi American.
			Maverick Tube.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Merchant Metals. Phoenix Steel. Pittsburgh Tube. Quanex. Sharon Tube. Southwestern Pipe. UNR-Leavitt. Welded Tube. Western Tube & Conduit. Wheatland Tube.
A–533–806	731–TA–561	Sulfanilic Acid/India	R–M Industries.
A–533–808	731–TA–638	Stainless Steel Wire Rod/India	AL Tech Specialty Steel. Armco Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–533–809	731–TA–639	Forged Stainless Steel Flanges/India.	Gerlin. Ideal Forging. Maass Flange. Markovitz Enterprises.
A–533–810	731–TA–679	Stainless Steel Bar/India	AL Tech Specialty Steel. Carpenter Technology. Crucible Specialty Metals. Electralloy. Republic Engineered Steels. Slater Steels. Talley Metals Technology. United Steelworkers of America.
A–533–813	731–TA–778	Preserved Mushrooms/India	LK Bowman. Modern Mushroom Farms. Monterey Mushrooms. Mount Laurel Canning. Mushroom Canning. Southwood Farms. Sunny Dell Foods. United Canning.
A–533–817	731–TA–817	Cut-to-Length Carbon Steel Plate/India.	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. Tuscaloosa Steel. US Steel. United Steelworkers of America.
A–533–820	731–TA–900	Hot-Rolled Steel Products/India	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–533–823	731–TA–929	Silicomanganese/ndia	Eramet Marietta. Paper, Allied-Industrial, Chemical and Energy Workers. International Union, Local 5–0639.
A–533–824	731–TA–933	Polyethylene Terephthalate Film, Sheet and Strip. (PET Film)/India	DuPont Teijin Films. Mitsubishi Polyester Film LLC. SKC America Inc. Toray Plastics (America).
A–533–828	731–TA–1025	Prestressed Concrete Steel Wire Strand/India.	American Spring Wire Corp. Insteel Wire Products Co.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Sivaco Georgia LLC. Strand Tech Martin Inc. Sumiden Wire Products Corp.
A–533–838	731–TA–1061	Carbazole Violet Pigment 23/India	Allegheny Color Corp. Barker Fine Color Inc. Clariant Corp. Nation Ford Chemical Co. Sun Chemical Co.
A–533–843	731–TA–1096	Certain Lined Paper School Supplies/India.	Fay Paper Products Inc. MeadWestvaco Consumer & Office Products. Norcom Inc. Pacon Corp. Roaring Spring Blank Book Co. Top Flight Inc. United Steel, Paper and Forestry, Rubber,. Manufacturing, Energy, Allied Industrial and Service. Workers International Union, AFL–CIO–CLC (USW).
A–538–802	731–TA–514	Cotton Shop Towels/Bangladesh ..	Milliken.
A–549–502	731–TA–252	Welded Carbon Steel Pipe and Tube/Thailand.	Allied Tube & Conduit. American Tube. Bernard Epps. Bock Industries. Bull Moose Tube. Central Steel Tube. Century Tube. Copperweld Tubing. Cyclops. Hughes Steel & Tube. Kaiser Steel. Laclede Steel. Maruichi American. Maverick Tube. Merchant Metals. Phoenix Steel. Pittsburgh Tube. Quanex. Sharon Tube. Southwestern Pipe. UNR-Leavitt. Welded Tube. Western Tube & Conduit. Wheatland Tube.
A–549–601	731–TA–348	Malleable Cast Iron Pipe Fittings/Thailand.	Grinnell. Stanley G Flagg. Stockham Valves & Fittings. U-Brand. Ward Manufacturing.
A–549–807	731–TA–521	Carbon Steel Butt-Weld Pipe Fittings/Thailand.	Hackney. Ladish. Mills Iron Works. Steel Forgings. Tube Forgings of America.
A–549–812	731–TA–705	Furfuryl Alcohol/Thailand	QO Chemicals.
A–549–813	731–TA–706	Canned Pineapple/Thailand	International Longshoreman's and Warehouseman's. Union. Maui Pineapple.
A–549–817	731–TA–907	Hot-Rolled Steel Products/Thailand.	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–549–820	731–TA–1028	Prestressed Concrete Steel Wire Strand/Thailand.	American Spring Wire Corp. Insteel Wire Products Co. Sivaco Georgia LLC. Strand Tech Martin Inc. Sumiden Wire Products Corp.
A–549–821	731–TA–1045	Polyethylene Retail Carrier Bags/Thailand.	Aargus Plastics Inc. Advance Polybags Inc. Advance Polybags (Nevada) Inc. Advance Polybags (Northeast) Inc. Alpha Industries Inc. Alpine Plastics Inc. Ampac Packaging LLC. API Enterprises Inc. Command Packaging. Continental Poly Bags Inc. Durabag Co Inc. Europackaging LLC. Genpak LLC (formerly Continental Superbag LLC). Genpak LLC (formerly Strout Plastics). Hilex Poly Co LLC. Inteplast Group Ltd. PCL Packaging Inc. Poly-Pak Industries Inc. Roplast Industries Inc. Superbag Corp. Unistar Plastics LLC. Vanguard Plastics Inc. VS Plastics LLC.
A–552–801	731–TA–1012	Certain Frozen Fish Fillets/Vietnam.	America's Catch Inc. Aquafarms Catfish Inc. Carolina Classics Catfish Inc. Catfish Farmers of America. Consolidated Catfish Companies Inc. Delta Pride Catfish Inc. Fish Processors Inc. Guidry's Catfish Inc. Haring's Pride Catfish. Harvest Select Catfish (Alabama Catfish Inc). Heartland Catfish Co (TT&W Farm Products Inc). Prairie Lands Seafood (Illinois Fish Farmers. Cooperative). Pride of the Pond. Pride of the South Catfish Inc. Prime Line Inc. Seabrook Seafood Inc. Seacat (Arkansas Catfish Growers). Simmons Farm Raised Catfish Inc. Southern Pride Catfish LLC. Verret Fisheries Inc.
A–557–805	731–TA–527	Extruded Rubber Thread/Malaysia	Globe Manufacturing. North American Rubber Thread.
A–557–809	731–TA–866	Stainless Steel Butt-Weld Pipe Fittings/Malaysia.	Flo-Mac Inc. Gerlin. Markovitz Enterprises. Shaw Alloy Piping Products. Taylor Forge Stainless.
A–557–813	731–TA–1044	Polyethylene Retail Carrier Bags/Malaysia.	Aargus Plastics Inc. Advance Polybags Inc. Advance Polybags (Nevada) Inc. Advance Polybags (Northeast) Inc. Alpha Industries Inc. Alpine Plastics Inc. Ampac Packaging LLC. API Enterprises Inc. Command Packaging. Continental Poly Bags Inc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Durabag Co Inc.
			Europackaging LLC.
			Genpak LLC (formerly Continental Superbag LLC).
			Genpak LLC (formerly Strout Plastics).
			Hilex Poly Co LLC.
			Inteplast Group Ltd.
			PCL Packaging Inc.
			Poly-Pak Industries Inc.
			Roplast Industries Inc.
			Superbag Corp.
			Unistar Plastics LLC.
			Vanguard Plastics Inc.
			VS Plastics LLC.
A–559–502	731–TA–296	Small Diameter Standard and Rectangular Pipe and Tube/ Singapore.	Allied Tube & Conduit.
			American Tube.
			Bull Moose Tube.
			Cyclops.
			Hannibal Industries.
			Laclede Steel.
			Pittsburgh Tube.
			Sharon Tube.
			Western Tube & Conduit.
			Wheatland Tube.
A–559–601	731–TA–370	Color Picture Tubes/Singapore	Industrial Union Department, AFL–CIO.
			International Association of Machinists & Aerospace.
			Workers.
			International Brotherhood of Electrical Workers.
			International Union of Electronic, Electrical, Technical,.
			Salaried and Machine Workers.
			Philips Electronic Components Group.
			United Steelworkers of America.
			Zenith Electronics.
A–559–801	731–TA–396	Ball Bearings/Singapore	Barden Corp.
			Emerson Power Transmission.
			Kubar Bearings.
			McGill Manufacturing Co.
			MPB.
			Rexnord Inc.
			Rollway Bearings.
			Torrington.
A–559–802	731–TA–415	Industrial Belts/Singapore	The Gates Rubber Company.
			The Goodyear Tire and Rubber Company.
A–560–801	731–TA–742	Melamine Institutional Dinnerware/ Indonesia.	Carlisle Food Service Products.
			Lexington United.
			Plastics Manufacturing.
A–560–802	731–TA–779	Preserved Mushrooms/Indonesia ..	LK Bowman.
			Modern Mushroom Farms.
			Monterey Mushrooms.
			Mount Laurel Canning.
			Mushroom Canning.
			Southwood Farms.
			Sunny Dell Foods.
			United Canning.
A–560–803	731–TA–787	Extruded Rubber Thread/Indonesia.	North American Rubber Thread.
A–560–805	731–TA–818	Cut-to-Length Carbon Steel Plate/ Indonesia.	Bethlehem Steel.
			CitiSteel USA Inc.
			Geneva Steel.
			Gulf States Steel.
			IPSCO Steel.
			National Steel.
			Tuscaloosa Steel.
			US Steel.
			United Steelworkers of America.
A–560–811	731–TA–875	Steel Concrete Reinforcing Bar/Indonesia.	AB Steel Mill Inc.
			AmeriSteel.
			Birmingham Steel.
			Border Steel.
			Cascade Steel Rolling Mills Inc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			CMC Steel Group. Co-Steel Inc. Marion Steel. North Star Steel Co. Nucor Steel. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel. TAMCO. TXI-Chaparral Steel Co.
A–560–812	731–TA–901	Hot-Rolled Steel Products/Indonesia.	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–560–815	731–TA–957	Carbon and Certain Alloy Steel Wire Rod/Indonesia.	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills.
A–560–818	731–TA–1097	Certain Lined Paper School Supplies/Indonesia.	Fay Paper Products Inc. MeadWestvaco Consumer & Office Products. Norcom Inc. Pacon Corp. Roaring Spring Blank Book Co. Top Flight Inc. United Steel, Paper and Forestry, Rubber,. Manufacturing, Energy, Allied Industrial and Service. Workers International Union, AFL–CIO–CLC (USW).
A–565–801	731–TA–867	Stainless Steel Butt-Weld Pipe Fittings/Philippines.	Flo-Mac Inc. Gerlin. Markovitz Enterprises. Shaw Alloy Piping Products. Taylor Forge Stainless.
A–570–001	731–TA–125	Potassium Permanganate/China ...	Carus Chemical.
A–570–002	731–TA–130	Chloropicrin/China	LCP Chemicals & Plastics. Niklor Chemical.
A–570–003	731–TA–103	Cotton Shop Towels/China	Milliken. Texel Industries. Wikit.
A–570–007	731–TA–149	Barium Chloride/China	Chemical Products.
A–570–101	731–TA–101	Greige Polyester Cotton Printcloth/China.	Alice Manufacturing. Clinton Mills. Dan River. Greenwood Mills. Hamrick Mills. M Lowenstein. Mayfair Mills. Mount Vernon Mills.
A–570–501	731–TA–244	Natural Bristle Paint Brushes/China.	Baltimore Brush. Bestt Liebco. Elder & Jenks.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			EZ Paintr. H&G Industries. Joseph Lieberman & Sons. Purdy. Rubberset. Thomas Paint Applicators. Wooster Brush.
A–570–502	731–TA–265	Iron Construction Castings/China	Alhambra Foundry. Allegheny Foundry. Bingham & Taylor. Campbell Foundry. Charlotte Pipe & Foundry. Deeter Foundry. East Jordan Foundry. Le Baron Foundry. Municipal Castings. Neenah Foundry. Opelika Foundry. Pinkerton Foundry. Tyler Pipe. US Foundry & Manufacturing. Vulcan Foundry.
A–570–504	731–TA–282	Petroleum Wax Candles/China	The Al Root Company. Candle Artisans Inc. Candle-Lite. Cathedral Candle. Colonial Candle of Cape Cod. General Wax & Candle. Lenox Candles. Lumi-Lite Candle. Meuch-Kreuzer Candle. National Candle Association. Will & Baumer. WNS.
A–570–506	731–TA–298	Porcelain-on-Steel Cooking Ware/ China.	General Housewares.
A–570–601	731–TA–344	Tapered Roller Bearings/China	L&S Bearing. Timken. Torrington.
A–570–802	731–TA–441	Industrial Nitrocellulose/China	Hercules.
A–570–803	731–TA–457–A.	Axes and Adzes/China	Council Tool Co Inc. Warwood Tool. Woodings-Verona.
A–570–803	731–TA–457–B.	Bars and Wedges/China	Council Tool Co Inc. Warwood Tool. Woodings-Verona.
A–570–803	731–TA–457–C.	Hammers and Sledges/China	Council Tool Co Inc. Warwood Tool. Woodings-Verona.
A–570–803	731–TA–457–D.	Picks and Mattocks/China	Council Tool Co Inc. Warwood Tool. Woodings-Verona.
A–570–804	731–TA–464	Sparklers/China	BJ Alan. Diamond Sparkler. Elkton Sparkler.
A–570–805	731–TA–466	Sodium Thiosulfate/China	Calabrian.
A–570–806	731–TA–472	Silicon Metal/China	American Alloys. Elkem Metals. Globe Metallurgical. International Union of Electronics, Electrical, Machine. and Furniture Workers (Local 693). Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. SiMETCO. SKW Alloys. Textile Processors, Service Trades, Health Care. Professional and Technical Employees (Local 60). United Steelworkers of America (Locals 5171, 8538 and. 12646).

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
A–570–808	731–TA–474	Chrome-Plated Lug Nuts/China	Consolidated International Automotive. Key Manufacturing. McGard.
A–570–811	731–TA–497	Tungsten Ore Concentrates/China	Curtis Tungsten. US Tungsten.
A–570–814	731–TA–520	Carbon Steel Butt-Weld Pipe Fittings/China.	Hackney. Ladish. Mills Iron Works. Steel Forgings. Tube Forgings of America.
A–570–815	731–TA–538	Sulfanilic Acid/China	R–M Industries.
A–570–819	731–TA–567	Ferrosilicon/China	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081,. 5171 and 12646).
A–570–822	731–TA–624	Helical Spring Lock Washers/China.	Illinois Tool Works.
A–570–825	731–TA–653	Sebacic Acid/China	Union Camp.
A–570–826	731–TA–663	Paper Clips/China	ACCO USA. Labelon/Noesting. TRICO Manufacturing.
A–570–827	731–TA–669	Cased Pencils/China	Blackfeet Indian Writing Instrument. Dixon-Ticonderoga. Empire Berol. Faber-Castell. General Pencil. JR Moon Pencil. Musgrave Pen & Pencil. Panda. Writing Instrument Manufacturers Association, Pencil. Section.
A–570–828	731–TA–672	Silicomanganese/China	Elkem Metals. Oil, Chemical and Atomic Workers (Local 3–639).
A–570–830	731–TA–677	Coumarin/China	Rhone-Poulenc.
A–570–831	731–TA–683	Fresh Garlic/China	A&D Christopher Ranch. Belridge Packing. Colusa Produce. Denice & Filice Packing. El Camino Packing. The Garlic Company. Vessey and Company.
A–570–832	731–TA–696	Pure Magnesium/China	Dow Chemical. International Union of Operating Engineers (Local 564). Magnesium Corporation of America. United Steelworkers of America (Local 8319).
A–570–835	731–TA–703	Furfuryl Alcohol/China	QO Chemicals.
A–570–836	731–TA–718	Glycine/China	Chattem. Hampshire Chemical.
A–570–840	731–TA–724	Manganese Metal/China	Elkem Metals. Kerr-McGee.
A–570–842	731–TA–726	Polyvinyl Alcohol/China	Air Products and Chemicals.
A–570–844	731–TA–741	Melamine Institutional Dinnerware/China.	Carlisle Food Service Products. Lexington United. Plastics Manufacturing.
A–570–846	731–TA–744	Brake Rotors/China	Brake Parts. Coalition for the Preservation of American Brake Drum. and Rotor Aftermarket Manufacturers. Iroquois Tool Systems. Kelsey Hayes. Kinetic Parts Manufacturing. Overseas Auto Parts. Wagner Brake.
A–570–847	731–TA–749	Persulfates/China	FMC.
A–570–848	731–TA–752	Crawfish Tail Meat/China	A&S Crawfish. Acadiana Fisherman's Co-Op. Arnaudville Seafood.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Atchafalaya Crawfish Processors.
			Basin Crawfish Processors.
			Bayou Land Seafood.
			Becnel's Meat & Seafood.
			Bellard's Poultry & Crawfish.
			Bonanza Crawfish Farm.
			Cajun Seafood Distributors.
			Carl's Seafood.
			Catahoula Crawfish.
			Choplin SFD.
			CJ's Seafood & Purged Crawfish.
			Clearwater Crawfish.
			Crawfish Processors Alliance.
			Harvey's Seafood.
			Lawtell Crawfish Processors.
			Louisiana Premium Seafoods.
			Louisiana Seafood.
			LT West.
			Phillips Seafood.
			Prairie Cajun Wholesale Seafood Dist.
			Riceland Crawfish.
			Schexnider Crawfish.
			Seafood International Distributors.
			Sylvester's Processors.
			Teche Valley Seafood.
A–570–849	731–TA–753	Cut-to-Length Carbon Steel Plate/China.	Acme Metals Inc.
			Bethlehem Steel.
			CitiSteel USA Inc.
			Geneva Steel.
			Gulf States Steel.
			Lukens Inc.
			National Steel.
			US Steel.
			United Steelworkers of America.
A–570–850	731–TA–757	Collated Roofing Nails/China	Illinois Tool Works.
			International Staple and Machines.
			Stanley-Bostitch.
A–570–851	731–TA–777	Preserved Mushrooms/China	LK Bowman.
			Modern Mushroom Farms.
			Monterey Mushrooms.
			Mount Laurel Canning.
			Mushroom Canning.
			Southwood Farms.
			Sunny Dell Foods.
			United Canning.
A–570–852	731–TA–814	Creatine Monohydrate/China	Pfanstiehl Laboratories.
A–570–853	731–TA–828	Aspirin/China	Rhodia.
A–570–855	731–TA–841	Non-Frozen Apple Juice Concentrate/China.	Coloma Frozen Foods.
			Green Valley Apples of California.
			Knouse Foods Coop.
			Mason County Fruit Packers Coop.
			Tree Top.
A–570–856	731–TA–851	Synthetic Indigo/China	Buffalo Color.
			United Steelworkers of America.
A–570–860	731–TA–874	Steel Concrete Reinforcing Bar/China.	AB Steel Mill Inc.
			AmeriSteel.
			Auburn Steel.
			Birmingham Steel.
			Border Steel.
			Cascade Steel Rolling Mills Inc.
			CMC Steel Group.
			Co-Steel Inc.
			Marion Steel.
			North Star Steel Co.
			Nucor Steel.
			Rebar Trade Action Coalition.
			Riverview Steel.
			Sheffield Steel.
			TAMCO.
			TXI-Chaparral Steel Co.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
A–570–862	731–TA–891	Foundry Coke/China	ABC Coke. Citizens Gas and Coke Utility. Erie Coke. Sloss Industries Corp. Tonawanda Coke. United Steelworkers of America.
A–570–863	731–TA–893	Honey/China	AH Meyer & Sons. Adee Honey Farms. Althoff Apiaries. American Beekeeping Federation. American Honey Producers Association. Anderson Apiaries. Arroyo Apiaries. Artesian Honey Producers. B Weaver Apiaries. Bailey Enterprises. Barkman Honey. Basler Honey Apiary. Beals Honey. Bears Paw Apiaries. Beaverhead Honey. Bee Biz. Bee Haven Honey. Belliston Brothers Apiaries. Big Sky Honey. Bill Rhodes Honey. Richard E Blake. Curt Bronnenbery. Brown's Honey Farms. Brumley's Bees. Buhmann Apiaries. Carys Honey Farms. Chaparrel Honey. Charles Apiaries. Mitchell Charles. Collins Honey. Conor Apiaries. Coy's Honey Farm. Dave Nelson Apiaries. Delta Bee. Eisele's Pollination & Honey. Ellingsoa's. Elliott Curtis & Sons. Charles L Emmons, Sr. Gause Honey. Gene Brandi Apiaries. Griffith Honey. Haff Apiaries. Hamilton Bee Farms. Hamilton Honey. Happie Bee. Harvest Honey. Harvey's Honey. Hiatt Honey. Hoffman Honey. Hollman Apiaries. Honey House. Honeybee Apiaries. Gary M Honl. Rand William Honl and Sydney Jo Honl. James R & Joann Smith Trust. Jaynes Bee Products. Johnston Honey Farms. Larry Johnston. Ke-An Honey. Kent Honeybees. Lake-Indianhead Honey Farms. Lamb's Honey Farm. Las Flores Apiaries. Mackrill Honey Farms & Sales. Raymond Marquette. Mason & Sons Honey. McCoy's Sunny South Apiaries.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Merrimack Valley Apiaries & Evergreen Honey.
			Met 2 Honey Farm.
			Missouri River Honey.
			Mitchell Brothers Honey.
			Monda Honey Farm.
			Montana Dakota Honey.
			Northern Bloom Honey.
			Noye's Apiaries.
			Oakes Honey.
			Oakley Honey Farms.
			Old Mill Apiaries.
			Opp Honey.
			Oro Dulce.
			Peterson's "Naturally Sweet" Honey.
			Potoczak Bee Farms.
			Price Apiaries.
			Pure Sweet Honey Farms.
			Robertson Pollination Service.
			Robson Honey.
			William Robson.
			Rosedale Apiaries.
			Ryan Apiaries.
			Schmidt Honey Farms.
			Simpson Apiaries.
			Sioux Honey Association.
			Smoot Honey.
			Solby Honey.
			Stahlman Apiaries.
			Steve E Parks Apiaries.
			Stroope Bee & Honey.
			T&D Honey Bee.
			Talbott's Honey.
			Terry Apiaries.
			Thompson Apiaries.
			Triple A Farm.
			Tropical Blossom Honey.
			Tubbs Apiaries.
			Venable Wholesale.
			Walter L Wilson Buzz 76 Apiaries.
			Wiebersiek Honey Farms.
			Wilmer Farms.
			Brent J Woodworth.
			Wooten's Golden Queens.
			Yaddof Apiaries.
A–570–864	731–TA–895	Pure Magnesium (Granular)/China	Concerned Employees of Northwest Alloys.
			Magnesium Corporation of America.
			United Steelworkers of America.
			United Steelworkers of America (Local 8319).
A–570–865	731–TA–899	Hot-Rolled Steel Products/China ..	Bethlehem Steel.
			Gallatin Steel.
			Independent Steelworkers.
			IPSCO.
			LTV Steel.
			National Steel.
			Nucor.
			Rouge Steel Co.
			Steel Dynamics.
			US Steel.
			United Steelworkers of America.
			WCI Steel Inc.
			Weirton Steel.
			Wheeling-Pittsburgh Steel Corp.
A–570–866	731–TA–921	Folding Gift Boxes/China	Field Container.
			Harvard Folding Box.
			Sterling Packaging.
			Superior Packaging.
A–570–867	731–TA–922	Automotive Replacement Glass Windshields/China.	PPG Industries.
			Safelite Glass.
			Viracon/Curvlite Inc.
			Visteon Corporation.
A–570–868	731–TA–932	Folding Metal Tables and Chairs/China.	Krueger International.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			McCourt Manufacturing.
			Meco.
			Virco Manufacturing.
A–570–873	731–TA–986	Ferrovanadium/China	Bear Metallurgical Co.
			Shieldalloy Metallurgical Corp.
A–570–875	731–TA–990	Non-Malleable Cast Iron Pipe Fittings/China.	Anvil International Inc.
			Buck Co Inc.
			Frazier & Frazier Industries.
			Ward Manufacturing Inc.
A–570–877	731–TA–1010	Lawn and Garden Steel Fence Posts/China.	Steel City Corp.
A–570–878	731–TA–1013	Saccharin/China	PMC Specialties Group Inc.
A–570–879	731–TA–1014	Polyvinyl Alcohol/China	Celanese Ltd.
			E I du Pont de Nemours & Co.
A–570–880	731–TA–1020	Barium Carbonate/China	Chemical Products Corp.
A–570–881	731–TA–1021	Malleable Iron Pipe Fittings/China	Anvil International Inc.
			Buck Co Inc.
			Ward Manufacturing Inc.
A–570–882	731–TA–1022	Refined Brown Aluminum Oxide/China.	C–E Minerals.
			Treibacher Schleifmittel North America Inc.
			Washington Mills Co Inc.
A–570–884	731–TA–1034	Certain Color Television Receivers/China.	Five Rivers Electronic Innovations LLC.
			Industrial Division of the Communications Workers of.
			America (IUECWA).
			International Brotherhood of Electrical Workers (IBEW).
A–570–886	731–TA–1043	Polyethylene Retail Carrier Bags/China.	Aargus Plastics Inc.
			Advance Polybags Inc.
			Advance Polybags (Nevada) Inc.
			Advance Polybags (Northeast) Inc.
			Alpha Industries Inc.
			Alpine Plastics Inc.
			Ampac Packaging LLC.
			API Enterprises Inc.
			Command Packaging.
			Continental Poly Bags Inc.
			Durabag Co Inc.
			Europackaging LLC.
			Genpak LLC (formerly Continental Superbag LLC).
			Genpak LLC (formerly Strout Plastics).
			Hilex Poly Co LLC.
			Inteplast Group Ltd.
			PCL Packaging Inc.
			Poly-Pak Industries Inc.
			Roplast Industries Inc.
			Superbag Corp.
			Unistar Plastics LLC.
			Vanguard Plastics Inc.
			VS Plastics LLC.
A–570–887	731–TA–1046	Tetrahydrofurfuryl Alcohol/China	Penn Specialty Chemicals Inc.
A–570–888	731–TA–1047	Ironing Tables and Certain Parts Thereof/China.	Home Products International Inc.
A–570–890	731–TA–1058	Wooden Bedroom Furniture/China	American Drew.
			American of Martinsville.
			Bassett Furniture Industries Inc.
			Bebe Furniture.
			Carolina Furniture Works Inc.
			Carpenters Industrial Union Local 2093.
			Century Furniture Industries.
			Country Craft Furniture Inc.
			Craftique.
			Crawford Furniture Mfg Corp.
			EJ Victor Inc.
			Forest Designs.
			Harden Furniture Inc.
			Hart Furniture.
			Higdon Furniture Co.
			IUE Industrial Division of CWA Local 82472.
			Johnston Tombigbee Furniture Mfg Co.
			Kincaid Furniture Co Inc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			L & J G Stickley Inc. Lea Industries. Michels & Co. MJ Wood Products Inc. Mobel Inc. Modern Furniture Manufacturers Inc. Moosehead Mfg Co. Oakwood Interiors. O'Sullivan Industries Inc. Pennsylvania House Inc. Perdues Inc. Sandberg Furniture Mfg Co Inc. Stanley Furniture Co Inc. Statton Furniture Mfg Assoc. T Copeland & Sons. Teamsters, Chauffeurs, Warehousemen and Helpers. Local 991. Tom Seely Furniture. UBC Southern Council of Industrial Workers Local. Union 2305. United Steelworkers of America Local 193U. Vaughan Furniture Co Inc. Vaughan-Bassett Furniture Co Inc. Vermont Tubbs. Webb Furniture Enterprises Inc.
A–570–891	731–TA–1059	Hand Trucks and Certain Parts Thereof/China.	B&P Manufacturing. Gleason Industrial Products Inc. Harper Trucks Inc. Magline Inc. Precision Products Inc. Wesco Industrial Products Inc.
A–570–892	731–TA–1060	Carbazole Violet Pigment 23/ China.	Allegheny Color Corp. Barker Fine Color Inc. Clariant Corp. Nation Ford Chemical Co. Sun Chemical Co.
A–570–894	731–TA–1070	Certain Tissue Paper Products/ China.	American Crepe Corp. Cindus Corp. Eagle Tissue LLC. Flower City Tissue Mills Co and Subsidiary. Garlock Printing & Converting Corp. Green Mtn Specialties Inc. Hallmark Cards Inc. Pacon Corp. Paper, Allied-Industrial, Chemical and Energy Workers. International Union AFL–CIO ("PACE"). Paper Service LTD. Putney Paper. Seaman Paper Co of MA Inc.
A–570–895	731–TA–1069	Certain Crepe Paper Products/ China.	American Crepe Corp. Cindus Corp. Paper, Allied-Industrial, Chemical and Energy Workers. International Union AFL–CIO ("PACE"). Seaman Paper Co of MA Inc.
A–570–896	731–TA–1071	Alloy Magnesium/China	Garfield Alloys Inc. Glass, Molders, Pottery, Plastics & Allied Workers. International Local 374. Halaco Engineering. MagReTech Inc. United Steelworkers of America Local 8319. US Magnesium LLC.
A–570–899	731–TA–1091	Artists' Canvas/China	Duro Art Industries. ICG/Holliston Mills Inc. Signature World Class Canvas LLC. Tara Materials Inc.
A–570–898	731–TA–1082	Chlorinated Isocyanurates/China ..	BioLab Inc. Clearon Corp. Occidental Chemical Corp.
A–570–901	731–TA–1095	Certain Lined Paper School Supplies/China.	Fay Paper Products Inc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			MeadWestvaco Consumer & Office Products. Norcom Inc. Pacon Corp. Roaring Spring Blank Book Co. Top Flight Inc. United Steel, Paper and Forestry, Rubber,. Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (USW) .
A–570–904	731–TA–1103	Certain Activated Carbon/China	Calgon Carbon Corp. Norit Americas Inc.
A–570–905	731–TA–1104	Certain Polyester Staple Fiber/ China.	DAK Americas LLC. Formed Fiber Techmologies LLC. Nan Ya Plastics Corp America. Palmetto Synthetics LLC. United Synthetics Inc (USI). Wellman Inc.
A–570–908	731–TA–1110	Soium Hexametaphosphate (SHMP)/China.	ICL Performance Products LP. Innophos Inc.
A–580–008	731–TA–134	Color Television Receivers/Korea	Committee to Preserve American Color Television. Independent Radionic Workers of America. Industrial Union Department, AFL–CIO. International Brotherhood of Electrical Workers. International Union of Electrical, Radio and Machine. Workers.
A–580–507	731–TA–279	Malleable Cast Iron Pipe Fittings/ Korea.	Grinnell. Stanley G Flagg. Stockham Valves & Fittings. U-Brand. Ward Manufacturing.
A–580–601	731–TA–304	Top-of-the-Stove Stainless Steel Cooking Ware/. Korea	Farberware. Regal Ware. Revere Copper & Brass. WearEver/Proctor Silex.
A–580–603	731–TA–315	Brass Sheet and Strip/Korea	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace. Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products. United Steelworkers of America.
A–580–605	731–TA–369	Color Picture Tubes/Korea	Industrial Union Department, AFL–CIO. International Association of Machinists & Aerospace. Workers. International Brotherhood of Electrical Workers. International Union of Electronic, Electrical, Technical,. Salaried and Machine Workers. Philips Electronic Components Group. United Steelworkers of America. Zenith Electronics.
A–580–803	731–TA–427	Small Business Telephone Systems/Korea.	American Telephone & Telegraph. Comdial. Eagle Telephonic.
A–580–805	731–TA–442	Industrial Nitrocellulose/Korea	Hercules.
A–580–807	731–TA–459	Polyethylene Terephthalate Film/ Korea.	E I du Pont de Nemours. Hoechst Celanese. ICI Americas.
A–580–809	731–TA–533	Circular Welded Nonalloy Steel Pipe/Korea.	Allied Tube & Conduit. American Tube. Bull Moose Tube. Century Tube. CSI Tubular Products. Cyclops. Laclede Steel.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			LTV Tubular Products. Maruichi American. Sharon Tube. USX. Western Tube & Conduit. Wheatland Tube.
A–580–810	731–TA–540	Welded ASTM A–312 Stainless Steel Pipe/Korea.	Avesta Sandvik Tube. Bristol Metals. Crucible Materials. Damascus Tubular Products. United Steelworkers of America.
A–580–811	731–TA–546	Carbon Steel Wire Rope/Korea	Bridon American. Macwhyte. Paulsen Wire Rope. The Rochester Corporation. United Automobile, Aerospace and Agricultural. Implement Workers (Local 960). Williamsport. Wire-rope Works. Wire Rope Corporation of America.
A–580–812	731–TA–556	DRAMs of 1 Megabit and Above/Korea.	Micron Technology. NEC Electronics. Texas Instruments.
A–580–813	731–TA–563	Stainless Steel Butt-Weld Pipe Fittings/Korea.	Flo-Mac Inc. Gerlin. Markovitz Enterprises. Shaw Alloy Piping Products. Taylor Forge Stainless.
A–580–815	731–TA–607	Cold-Rolled Carbon Steel Flat Products/Korea.	Armco Steel. Bethlehem Steel. California Steel Industries. Gulf States Steel. Inland Steel Industries. LTV Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A–580–816	731–TA–618	Corrosion-Resistant Carbon Steel Flat Products/Korea.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A–580–825	731–TA–715	Oil Country Tubular Goods/Korea	Bellville Tube. IPSCO. Koppel Steel. Lone Star Steel. Maverick Tube. Newport Steel. North Star Steel. US Steel. USS/Kobe.
A–580–829	731–TA–772	Stainless Steel Wire Rod/Korea	AL Tech Specialty Steel. Carpenter Technology.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–580–831	731–TA–791	Stainless Steel Plate in Coils/Korea.	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
A–580–834	731–TA–801	Stainless Steel Sheet and Strip/Korea.	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A–580–836	731–TA–821	Cut-to-Length Carbon Steel Plate/Korea.	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. Tuscaloosa Steel. US Steel. United Steelworkers of America.
A–580–839	731–TA–825	Polyester Staple Fiber/Korea	Arteva Specialties Sarl. E I du Pont de Nemours. Intercontinental Polymers. Wellman.
A–580–841	731–TA–854	Structural Steel Beams/Korea	Northwestern Steel and Wire. Nucor. Nucor-Yamato Steel. TXI-Chaparral Steel. United Steelworkers of America.
A–580–844	731–TA–877	Steel Concrete Reinforcing Bar/Korea.	AB Steel Mill Inc. AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. Cascade Steel Rolling Mills Inc. CMC Steel Group. Co-Steel Inc. Marion Steel. North Star Steel Co. Nucor Steel. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel. TAMCO. TXI-Chaparral Steel Co.
A–580–846	731–TA–889	Stainless Steel Angle/Korea	Slater Steels. United Steelworkers of America.
A–580–847	731–TA–916	Stainless Steel Bar/Korea	Carpenter Technology. Crucible Specialty Metals. Electralloy. Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
A–580–850	731–TA–1017	Polyvinyl Alcohol/Korea	Celanese Ltd. E I du Pont de Nemours & Co.
A–580–852	731–TA–1026	Prestressed Concrete Steel Wire Strand/Korea.	American Spring Wire Corp. Insteel Wire Products Co. Sivaco Georgia LLC. Strand Tech Martin Inc. Sumiden Wire Products Corp.
A–583–008	731–TA–132	Small Diameter Carbon Steel Pipe and Tube/Tawian.	Allied Tube & Conduit. American Tube. Bull Moose Tube. Copperweld Tubing. J&L Steel.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Kaiser Steel. Merchant Metals. Pittsburgh Tube. Southwestern Pipe. Western Tube & Conduit.
A–583–009	731–TA–135	Color Television Receivers/Taiwan	Committee to Preserve American Color Television. Independent Radionic Workers of America. Industrial Union Department, AFL–CIO. International Brotherhood of Electrical Workers. International Union of Electrical, Radio and Machine. Workers.
A–583–080	AA1921–197	Carbon Steel Plate/Taiwan	No Petition (self-initiated by Treasury);. Commerce service list identifies:. Bethlehem Steel. China Steel. US Steel.
A–583–505	731–TA–277	Oil Country Tubular Goods/Taiwan	CF&I Steel. Copperweld Tubing. Cyclops. KPC. Lone Star Steel. LTV Steel. Maverick Tube. Quanex. US Steel.
A–583–507	731–TA–280	Malleable Cast Iron Pipe Fittings/Taiwan.	Grinnell. Stanley G Flagg. Stockham Valves & Fittings. U-Brand. Ward Manufacturing.
A–583–508	731–TA–299	Porcelain-on-Steel Cooking Ware/Taiwan.	General Housewares.
A–583–603	731–TA–305	Top-of-the-Stove Stainless Steel Cooking Ware/Taiwan.	Farberware. Regal Ware. Revere Copper & Brass. WearEver/Proctor Silex.
A–583–605	731–TA–310	Carbon Steel Butt-Weld Pipe Fittings/Taiwan.	Ladish. Mills Iron Works. Steel Forgings. Tube Forgings of America. Weldbend.
A–583–803	731–TA–410	Light-Walled Rectangular Tube/Taiwan.	Bull Moose Tube. Hannibal Industries. Harris Tube. Maruichi American. Searing Industries. Southwestern Pipe. Western Tube & Conduit.
A–583–806	731–TA–428	Small Business Telephone Systems/Taiwan.	American Telephone & Telegraph. Comdial. Eagle Telephonic.
A–583–810	731–TA–475	Chrome-Plated Lug Nuts/Taiwan	Consolidated International Automotive. Key Manufacturing. McGard.
A–583–814	731–TA–536	Circular Welded Nonalloy Steel Pipe/Taiwan.	Allied Tube & Conduit. American Tube. Bull Moose Tube. Century Tube. CSI Tubular Products. Cyclops. Laclede Steel. LTV Tubular Products. Maruichi American. Sharon Tube. USX. Western Tube & Conduit. Wheatland Tube.
A–583–815	731–TA–541	Welded ASTM A–312 Stainless Steel Pipe/Taiwan.	Avesta Sandvik Tube. Bristol Metals. Crucible Materials. Damascus Tubular Products. United Steelworkers of America.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
A–583–816	731–TA–564	Stainless Steel Butt-Weld Pipe Fittings/Taiwan.	Flo-Mac Inc. Gerlin. Markovitz Enterprises. Shaw Alloy Piping Products. Taylor Forge Stainless.
A–583–820	731–TA–625	Helical Spring Lock Washers/Taiwan.	Illinois Tool Works.
A–583–821	731–TA–640	Forged Stainless Steel Flanges/Taiwan.	Gerlin. Ideal Forging. Maass Flange. Markovitz Enterprises.
A–583–824	731–TA–729	Polyvinyl Alcohol/Taiwan	Air Products and Chemicals.
A–583–825	731–TA–743	Melamine Institutional Dinnerware/Taiwan.	Carlisle Food Service Products. Lexington United. Plastics Manufacturing.
A–583–826	731–TA–759	Collated Roofing Nails/Taiwan	Illinois Tool Works. International Staple and Machines. Stanley-Bostitch.
A–583–827	731–TA–762	SRAMs/Taiwan	Micron Technology.
A–583–828	731–TA–775	Stainless Steel Wire Rod/Taiwan	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–583–830	731–TA–793	Stainless Steel Plate in Coils/Taiwan.	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
A–583–831	731–TA–803	Stainless Steel Sheet and Strip/Taiwan.	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A–583–833	731–TA–826	Polyester Staple Fiber/Taiwan	Arteva Specialties Sarl. Intercontinental Polymers. Wellman.
A–583–835	731–TA–906	Hot-Rolled Steel Products/Taiwan	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–583–837	731–TA–934	Polyethylene Terephthalate Film, Sheet and Strip. (PET Film)/Taiwan	DuPont Teijin Films. Mitsubishi Polyester Film LLC. SKC America Inc. Toray Plastics (America).
A–588–005	731–TA–48	High Power Microwave Amplifiers/Japan.	Aydin. MCL.
A–588–015	AA1921–66	Television Receivers/Japan	AGIV (USA). Casio Computer. CBM America. Citizen Watch. Funai Electric. Hitachi. Industrial Union Department. JC Penny. Matsushita.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Mitsubishi Electric. Montgomery Ward. NEC. Orion Electric. PT Imports. Philips Electronics. Philips Magnavox. Sanyo. Sharp. Toshiba. Toshiba America Consumer Products. Victor Company of Japan. Zenith Electronics.
A–588–028	AA1921–111	Roller Chain/Japan	Acme Chain Division, North American Rockwell. American Chain Association. Atlas Chain & Precision Products. Diamond Chain. Link-Belt Chain Division, FMC. Morse Chain Division, Borg Warner. Rex Chainbelt.
A–588–029	AA1921–85	Fish Netting of Man-Made Fiber/Japan.	Jovanovich Supply. LFSI. Trans-Pacific Trading.
A–588–038	AA1921–98	Bicycle Speedometers/Japan	Avocet. Cat Eye. Diversified Products. NS International. Sanyo Electric. Stewart-Warner.
A–588–041	AA1921–115	Synthetic Methionine/Japan	Monsanto.
A–588–045	AA1921–124	Steel Wire Rope/Japan	AMSTED Industries.
A–588–046	AA1921–129	Polychloroprene Rubber/Japan	E I du Pont de Nemours.
A–588–054	AA1921–143	Tapered Roller Bearings 4 Inches and Under/Japan.	No companies identified as petitioners at the. Commission; Commerce service list identifies:. American Honda Motor. Federal Mogul. Ford Motor. General Motors. Honda. Hoover-NSK Bearing. Isuzu. Itocho. ITOCHU International. Kanematsu-Goshu USA. Kawasaki Heavy Duty Industries. Komatsu America. Koyo Seiko. Kubota Tractor. Mitsubishi. Motorambar. Nachi America. Nachi Western. Nachi-Fujikoshi. Nippon Seiko. Nissan Motor. Nissan Motor USA. NSK. NTN. Subaru of America. Sumitomo. Suzuki Motor. Timken. Toyota Motor Sales. Yamaha Motors.
A–588–055	AA1921–154	Acrylic Sheet/Japan	Polycast Technology.
A–588–056	AA1921–162	Melamine/Japan	Melamine Chemical.
A–588–068	AA1921–188	Prestressed Concrete Steel Wire Strand/Japan.	American Spring Wire. Armco Steel. Bethlehem Steel. CF&I Steel. Florida Wire & Cable.
A–588–405	731–TA–207	Cellular Mobile Telephones/Japan	EF Johnson. Motorola.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
A–588–602	731–TA–309	Carbon Steel Butt-Weld Pipe Fittings/Japan.	Ladish. Mills Iron Works. Steel Forgings. Tube Forgings of America. Weldbend.
A–588–604	731–TA–343	Tapered Roller Bearings Over 4 Inches/Japan.	L&S Bearing. Timken. Torrington.
A–588–605	731–TA–347	Malleable Cast Iron Pipe Fittings/Japan.	Grinnell. Stanley G Flagg. Stockham Valves & Fittings. U-Brand. Ward Manufacturing.
A–588–609	731–TA–368	Color Picture Tubes/Japan	Industrial Union Department, AFL–CIO. International Association of Machinists & Aerospace. Workers. International Brotherhood of Electrical Workers. International Union of Electronic, Electrical, Technical,. Salaried and Machine Workers. Philips Electronic Components Group. United Steelworkers of America. Zenith Electronics.
A–588–702	731–TA–376	Stainless Steel Butt-Weld Pipe Fittings/Japan.	Flo-Mac Inc. Flowline. Shaw Alloy Piping Products. Taylor Forge Stainless.
A–588–703	731–TA–377	Internal Combustion Industrial Forklift Trucks/Japan.	Ad-Hoc Group of Workers from Hyster's Berea,. Kentucky and Sulligent, Alabama Facilities. Allied Industrial Workers of America. Hyster. Independent Lift Truck Builders Union. International Association of Machinists & Aerospace. Workers. United Shop & Service Employees.
A–588–704	731–TA–379	Brass Sheet and Strip/Japan	Allied Industrial Workers of America. American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace. Workers. Mechanics Educational Society of America (Local 56). The Miller Company. North Coast Brass & Copper. Olin. Pegg Metals. Revere Copper Products. United Steelworkers of America.
A–588–706	731–TA–384	Nitrile Rubber/Japan	Uniroyal Chemical.
A–588–707	731–TA–386	Granular Polytetrafluoroethylene/Japan.	E I du Pont de Nemours. ICI Americas.
A–588–802	731–TA–389	3.5" Microdisks/Japan	Verbatim.
A–588–804	731–TA–394–A.	Ball Bearings/Japan	Barden Corp. Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co. MPB. Rexnord Inc. Rollway Bearings. Torrington.
A–588–804	731–TA–394–B.	Cylindrical Roller Bearings/Japan	Barden Corp. Emerson Power Transmission. Kubar Bearings. MPB. Rollway Bearings. Torrington.
A–588–804	731–TA–394–C.	Spherical Plain Bearings/Japan	Barden Corp. Emerson Power Transmission. Kubar Bearings. Rollway Bearings. Torrington.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
A–588–806	731–TA–408	Electrolytic Manganese Dioxide/Japan.	Chemetals. Kerr-McGee. Rayovac.
A–588–807	731–TA–414	Industrial Belts/Japan	The Gates Rubber Company. The Goodyear Tire and Rubber Company.
A–588–809	731–TA–426	Small Business Telephone Systems/Japan.	American Telephone & Telegraph. Comdial. Eagle Telephonic.
A–588–810	731–TA–429	Mechanical Transfer Presses/Japan.	Allied Products. United Autoworkers of America. United Steelworkers of America.
A–588–811	731–TA–432	Drafting Machines/Japan	Vemco.
A–588–812	731–TA–440	Industrial Nitrocellulose/Japan	Hercules.
A–588–815	731–TA–461	Gray Portland Cement and Clinker/Japan.	Calaveras Cement. Hanson Permanente Cement. Independent Workers of North America (Locals 49, 52,. 89, 192 and 471). International Union of Operating Engineers (Local 12). National Cement Co Inc. National Cement Company of California. Southdown.
A–588–817	731–TA–469	Electroluminescent Flat-Panel Displays/Japan.	The Cherry Corporation. Electro Plasma. Magnascreen. OIS Optical Imaging Systems. Photonics Technology. Planar Systems. Plasmaco.
A–588–823	731–TA–571	Professional Electric Cutting Tools/Japan.	Black & Decker.
A–588–826	731–TA–617	Corrosion-Resistant Carbon Steel Flat Products/Japan.	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Lukens Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A–588–831	731–TA–660	Grain-Oriented Silicon Electrical Steel/Japan.	Allegheny Ludlum. Armco Steel. United Steelworkers of America.
A–588–833	731–TA–681	Stainless Steel Bar/Japan	AL Tech Specialty Steel. Carpenter Technology. Crucible Specialty Metals. Electralloy. Republic Engineered Steels. Slater Steels. Talley Metals Technology. United Steelworkers of America.
A–588–835	731–TA–714	Oil Country Tubular Goods/Japan	IPSCO. Koppel Steel. Lone Star Steel Co. Maverick Tube. Newport Steel. North Star Steel. US Steel.
A–588–836	731–TA–727	Polyvinyl Alcohol/Japan	Air Products and Chemicals.
A–588–837	731–TA–737	Large Newspaper Printing Presses/Japan.	Rockwell Graphics Systems.
A–588–838	731–TA–739	Clad Steel Plate/Japan	Lukens Steel.
A–588–839	731–TA–740	Sodium Azide/Japan	American Azide.
A–588–840	731–TA–748	Gas Turbo-Compressor Systems/Japan.	Demag Delaval. Dresser-Rand. United Steelworkers of America.
A–588–841	731–TA–750	Vector Supercomputers/Japan	Cray Research.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
A–588–843	731–TA–771	Stainless Steel Wire Rod/Japan ...	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–588–845	731–TA–800	Stainless Steel Sheet and Strip/ Japan.	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A–588–846	731–TA–807	Hot-Rolled Carbon Steel Flat Products/Japan.	Acme Steel. Bethlehem Steel. California Steel Industries. Gallatin Steel. Geneva Steel. Gulf States Steel. Independent Steelworkers. IPSCO. Ispat/Inland. LTV Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–588–847	731–TA–820	Cut-to-Length Carbon Steel Plate/ Japan.	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel. Tuscaloosa Steel. US Steel. United Steelworkers of America.
A–588–850	731–TA–847	Large-Diameter Carbon Steel Seamless Pipe/Japan.	North Star Steel. Timken. US Steel. United Steelworkers of America. USS/Kobe.
A–588–851	731–TA–847	Small-Diameter Carbon Steel Seamless Pipe/Japan.	Koppel Steel. North Star Steel. Sharon Tube. Timken. US Steel. United Steelworkers of America. USS/Kobe. Vision Metals' Gulf States Tube.
A–588–852	731–TA–853	Structural Steel Beams/Japan	Northwestern Steel and Wire. Nucor. Nucor-Yamato Steel. TXI-Chaparral Steel. United Steelworkers of America.
A–588–854	731–TA–860	Tin-Mill Products/Japan	Independent Steelworkers. United Steelworkers of America. Weirton Steel.
A–588–856	731–TA–888	Stainless Steel Angle/Japan	Slater Steels. United Steelworkers of America.
A–588–857	731–TA–919	Welded Large Diameter Line Pipe/ Japan.	American Cast Iron Pipe. Berg Steel Pipe. Bethlehem Steel. Napa Pipe/Oregon Steel Mills. Saw Pipes USA. Stupp. US Steel.
A–588–861	731–TA–1016	Polyvinyl Alcohol/Japan	Celenex Ltd. E I du Pont de Nemours & Co.
A–588–862	731–TA–1023	Certain Ceramic Station Post Insulators/Japan.	Lapp Insulator Co LLC. Newell Porcelain Co Inc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Victor Insulators Inc.
A–588–866	731–TA–1090	Superalloy Degassed Chromium/ Japan.	Eramet Marietta Inc.
A–602–803	731–TA–612	Corrosion-Resistant Carbon Steel Flat Products/. Australia	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
A–791–805	731–TA–792	Stainless Steel Plate in Coils/ South Africa.	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
A–791–808	731–TA–850	Small-Diameter Carbon Steel Seamless Pipe/South. Africa	Koppel Steel. North Star Steel. Sharon Tube. Timken. US Steel. United Steelworkers of America. USS/Kobe. Vision Metals' Gulf States Tube.
A–791–809	731–TA–905	Hot-Rolled Steel Products/South Africa.	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–791–815	731–TA–987	Ferrovanadium/South Africa	Bear Metallurgical Co. Shieldalloy Metallurgical Corp.
A–821–801	731–TA–340E.	Solid Urea/Russia	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A–821–802	731–TA–539–C.	Uranium/Russia	Ferret Exploration. First Holding. Geomex Minerals. IMC Fertilizer. Malapai Resources. Oil, Chemical and Atomic Workers. Pathfinder Mines. Power Resources. Rio Algom Mining. Solution Mining. Total Minerals.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Umetco Minerals. Uranium Resources.
A–821–804	731–TA–568	Ferrosilicon/Russia	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081,. 5171 and 12646).
A–821–805	731–TA–697	Pure Magnesium/Russia	Dow Chemical. International Union of Operating Engineers (Local 564). Magnesium Corporation of America. United Steelworkers of America (Local 8319).
A–821–807	731–TA–702	Ferrovanadium and Nitrided Vanadium/Russia.	Shieldalloy Metallurgical.
A–821–809	731–TA–808	Hot-Rolled Carbon Steel Flat Products/Russia.	Acme Steel. Bethlehem Steel. California Steel Industries. Gallatin Steel. Geneva Steel. Gulf States Steel. Independent Steelworkers. IPSCO. Ispat/Inland. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–821–811	731–TA–856	Ammonium Nitrate/Russia	Agrium. Air Products and Chemicals. El Dorado Chemical. LaRoche. Mississippi Chemical. Nitram. Wil-Gro Fertilizer.
A–821–817	731–TA–991	Silicon Metal/Russia	Globe Metallurgical Inc. SIMCALA Inc.
A–821–819	731–TA1072	Pure and Alloy Magnesium/Russia	Garfield Alloys Inc. Glass, Molders, Pottery, Plastics & Allied Workers. International Local 374. Halaco Engineering. MagReTech Inc. United Steelworkers of America Local 8319. US Magnesium LLC.
A–822–801	731–TA–340B.	Solid Urea/Belarus	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A–822–804	731–TA–873	Steel Concrete Reinforcing Bar/Belarus.	AB Steel Mill Inc. AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. Cascade Steel Rolling Mills Inc. CMC Steel Group. Co-Steel Inc. Marion Steel. North Star Steel Co. Nucor Steel. Rebar Trade Action Coalition. Riverview Steel.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Sheffield Steel.
			TAMCO.
			TXI-Chaparral Steel Co.
A–823–801	731–TA–340H.	Solid Urea/Ukraine	Agrico Chemical.
			American Cyanamid.
			CF Industries.
			First Mississippi.
			Mississippi Chemical.
			Terra International.
			WR Grace.
A–823–802	731–TA–539–E.	Uranium/Ukraine	Ferret Exploration.
			First Holding.
			Geomex Minerals.
			IMC Fertilizer.
			Malapai Resources.
			Oil, Chemical and Atomic Workers.
			Pathfinder Mines.
			Power Resources.
			Rio Algom Mining.
			Solution Mining.
			Total Minerals.
			Umetco Minerals.
			Uranium Resources.
A–823–804	731–TA–569	Ferrosilicon/Ukraine	AIMCOR.
			Alabama Silicon.
			American Alloys.
			Globe Metallurgical.
			Oil, Chemical and Atomic Workers (Local 389).
			Silicon Metaltech.
			United Autoworkers of America (Local 523).
			United Steelworkers of America (Locals 2528, 3081, . 5171 and 12646).
A–823–805	731–TA–673	Silicomanganese/Ukraine	Elkem Metals.
			Oil, Chemical and Atomic Workers (Local 3–639).
A–823–809	731–TA–882	Steel Concrete Reinforcing Bar/Ukraine.	AB Steel Mill Inc.
			AmeriSteel.
			Auburn Steel.
			Birmingham Steel.
			Border Steel.
			Cascade Steel Rolling Mills Inc.
			CMC Steel Group.
			Co-Steel Inc.
			Marion Steel.
			North Star Steel Co.
			Nucor Steel.
			Rebar Trade Action Coalition.
			Riverview Steel.
			Sheffield Steel.
			TAMCO.
			TXI-Chaparral Steel Co.
A–823–810	731–TA–894	Ammonium Nitrate/Ukraine	Agrium.
			Air Products and Chemicals.
			Committee for Fair Ammonium Nitrate Trade.
			El Dorado Chemical.
			LaRoche Industries.
			Mississippi Chemical.
			Nitram.
			Prodica.
A–823–811	731–TA–908	Hot-Rolled Steel Products/Ukraine	Bethlehem Steel.
			Gallatin Steel.
			Independent Steelworkers.
			IPSCO.
			LTV Steel.
			National Steel.
			Nucor.
			Rouge Steel Co.
			Steel Dynamics.
			US Steel.
			United Steelworkers of America.
			WCI Steel Inc.
			Weirton Steel.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Wheeling-Pittsburgh Steel Corp.
A–823–812	731–TA–962	Carbon and Certain Alloy Steel Wire Rod/Ukraine.	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills.
A–831–801	731–TA–340A.	Solid Urea/Armenia	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A–834–806	731–TA–902	Hot-Rolled Steel Products/ Kazakhstan.	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dymanics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–834–807	731–TA–930	Silicomanganese/Kazakhstan	Eramet Marietta. Paper, Allied-Industrial, Chemical and Energy Workers. International Union, Local 5–0639.
A–841–804	731–TA–879	Steel Concrete Reinforcing Bar/ Moldova.	AB Steel Mill Inc. AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. Cascade Steel Rolling Mills Inc. CMC Steel Group. Co-Steel Inc. Marion Steel. North Star Steel Co. Nucor Steel. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel. TAMCO. TXI-Chaparral Steel Co.
A–841–805	731–TA–959	Carbon and Certain Alloy Steel Wire Rod/Moldova.	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills.
A–842–801	731–TA–340F.	Solid Urea/Tajikistan	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A–843–801	731–TA–340G.	Solid Urea/Turkmenistan	Agrico Chemical.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A–843–802	731–TA–539	Uranium/Kazakhstan	Ferret Exploration. First Holding. Geomex Minerals. IMC Fertilizer. Malapai Resources. Oil, Chemical and Atomic Workers. Pathfinder Mines. Power Resources. Rio Algom Mining. Solution Mining. Total Minerals. Umetco Minerals. Uranium Resources.
A–843–804	731–TA–566	Ferrosilicon/Kazakhstan	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081,. 5171 and 12646).
A–844–801	731–TA–340I	Solid Urea/Uzbekistan	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. WR Grace.
A–844–802	731–TA–539–F.	Uranium/Uzbekistan	Ferret Exploration. First Holding. Geomex Minerals. IMC Fertilizer. Malapai Resources. Oil, Chemical and Atomic Workers. Pathfinder Mines. Power Resources. Rio Algom Mining. Solution Mining. Total Minerals. Umetco Minerals. Uranium Resources.
A–851–802	731–TA–846	Small-Diameter Carbon Steel Seamless Pipe/Czech. Republic	Koppel Steel. North Star Steel. Sharon Tube. Timken. US Steel. United Steelworkers of America. USS/Kobe. Vision Metals' Gulf States Tube.
C–122–404	701–TA–224	Live Swine/Canada	National Pork Producers Council. Wilson Foods.
C–122–805	701–TA–297	Steel Rails/Canada	Bethlehem Steel. CF&I Steel.
C–122–815	701–TA–309–A.	Alloy Magnesium/Canada	Magnesium Corporation of America.
C–122–815	701–TA–309–B.	Pure Magnesium/Canada	Magnesium Corporation of America.
C–122–839	701–TA–414	Softwood Lumber/Canada	71 Lumber Co. Almond Bros Lbr Co. Anthony Timberlands. Balfour Lbr Co. Ball Lumber. Banks Lumber Company. Barge Forest Products Co.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Beadles Lumber Co.
			Bearden Lumber.
			Bennett Lumber.
			Big Valley Band Mill.
			Bighorn Lumber Co Inc.
			Blue Mountain Lumber.
			Buddy Bean Lumber.
			Burgin Lumber Co Ltd.
			Burt Lumber Company.
			C&D Lumber Co.
			Ceda-Pine Veneer.
			Cersosimo Lumber Co Inc.
			Charles Ingram Lumber Co Inc.
			Charleston Heart Pine.
			Chesterfield Lumber.
			Chips.
			Chocorua Valley Lumber Co.
			Claude Howard Lumber.
			Clearwater Forest Industries.
			CLW Inc.
			CM Tucker Lumber Corp.
			Coalition for Fair Lumber Imports Executive Committee.
			Cody Lumber Co.
			Collins Pine Co.
			Collums Lumber.
			Columbus Lumber Co.
			Contoocook River Lumber.
			Conway Guiteau Lumber.
			Cornwright Lumber Co.
			Crown Pacific.
			Daniels Lumber Inc.
			Dean Lumber Co Inc.
			Deltic Timber Corporation.
			Devils Tower Forest Products.
			DiPrizio Pine Sales.
			Dorchester Lumber Co.
			DR Johnson Lumber.
			East Brainerd Lumber Co.
			East Coast Lumber Company.
			Eas-Tex Lumber.
			ECK Wood Products.
			Ellingson Lumber Co.
			Elliott Sawmilling.
			Empire Lumber Co.
			Evergreen Forest Products.
			Excalibur Shelving Systems Inc.
			Exley Lumber Co.
			FH Stoltze Land & Lumber Co.
			FL Turlington Lbr Co Inc.
			Fleming Lumber.
			Flippo Lumber.
			Floragen Forest Products.
			Frank Lumber Co.
			Franklin Timber Co.
			Fred Tebb & Sons.
			Fremont Sawmill.
			Frontier Resources.
			Garrison Brothers Lumber Co and Subsidiaries.
			Georgia Lumber.
			Gilman Building Products.
			Godfrey Lumber.
			Granite State Forest Prod Inc.
			Great Western Lumber Co.
			Greenville Molding Inc.
			Griffin Lumber Company.
			Guess Brothers Lumber.
			Gulf Lumber.
			Gulf States Paper.
			Guy Bennett Lumber.
			Hampton Resources.
			Hancock Lumber.
			Hankins Inc.
			Hankins Lumber Co.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Harrigan Lumber.
			Harwood Products.
			Haskell Lumber Inc.
			Hatfield Lumber.
			Hedstrom Lumber.
			Herrick Millwork Inc.
			HG Toler & Son Lumber Co Inc.
			HG Wood Industries LLC.
			Hogan & Storey Wood Prod.
			Hogan Lumber Co.
			Hood Industries.
			HS Hofler & Sons Lumber Co Inc.
			Hubbard Forest Ind Inc.
			HW Culp Lumber Co.
			Idaho Veneer Co.
			Industrial Wood Products.
			Intermountain Res LLC.
			International Paper.
			J Franklin Jones Lumber Co Inc.
			Jack Batte & Sons Inc.
			Jasper Lumber Company.
			JD Martin Lumber Co.
			JE Jones Lumber Co.
			Jerry G Williams & Sons.
			JH Knighton Lumber Co.
			Johnson Lumber Company.
			Jordan Lumber & Supply.
			Joseph Timber Co.
			JP Haynes Lbr Co Inc.
			JV Wells Inc.
			JW Jones Lumber.
			Keadle Lumber Enterprises.
			Keller Lumber.
			King Lumber Co.
			Konkolville Lumber.
			Langdale Forest Products.
			Laurel Lumber Company.
			Leavitt Lumber Co.
			Leesville Lumber Co.
			Limington Lumber Co.
			Longview Fibre Co.
			Lovell Lumber Co Inc.
			M Kendall Lumber Co.
			Manke Lumber Co.
			Marriner Lumber Co.
			Mason Lumber.
			MB Heath & Sons Lumber Co.
			MC Dixon Lumber Co Inc.
			Mebane Lumber Co Inc.
			Metcalf Lumber Co Inc.
			Millry Mill Co Inc.
			Moose Creek Lumber Co.
			Moose River Lumber.
			Morgan Lumber Co Inc.
			Mount Yonah Lumber Co.
			Nagel Lumber.
			New Kearsarge Corp.
			New South.
			Nicolet Hardwoods.
			Nieman Sawmills SD.
			Nieman Sawmills WY.
			North Florida.
			Northern Lights Timber & Lumber.
			Northern Neck Lumber Co.
			Ochoco Lumber Co.
			Olon Belcher Lumber Co.
			Owens and Hurst Lumber.
			Packaging Corp of America.
			Page & Hill Forest Products.
			Paper, Allied-Industrial, Chemical and Energy Workers.
			International Union.
			Parker Lumber.
			Pate Lumber Co Inc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			PBS Lumber.
			Pedigo Lumber Co.
			Piedmont Hardwood Lumber Co.
			Pine River Lumber Co.
			Pinecrest Lumber Co.
			Pleasant River Lumber Co.
			Pleasant Western Lumber Inc.
			Plum Creek Timber.
			Pollard Lumber.
			Portac.
			Potlatch.
			Potomac Supply.
			Precision Lumber Inc.
			Pruitt Lumber Inc.
			R Leon Williams Lumber Co.
			RA Yancey Lumber.
			Rajala Timber Co.
			Ralph Hamel Forest Products.
			Randy D Miller Lumber.
			Rappahannock Lumber Co.
			Regulus Stud Mills Inc.
			Riley Creek Lumber.
			Roanoke Lumber Co.
			Robbins Lumber.
			Robertson Lumber.
			Roseburg Forest Products Co.
			Rough & Ready.
			RSG Forest Products.
			Rushmore Forest Products.
			RY Timber Inc.
			Sam Mabry Lumber Co.
			Scotch Lumber.
			SDS Lumber Co.
			Seacoast Mills Inc.
			Seago Lumber.
			Seattle-Snohomish.
			Seneca Sawmill.
			Shaver Wood Products.
			Shearer Lumber Products.
			Shuqualak Lumber.
			SI Storey Lumber.
			Sierra Forest Products.
			Sierra Pacific Industries.
			Sigfridson Wood Products.
			Silver City Lumber Inc.
			Somers Lbr & Mfg Inc.
			South & Jones.
			South Coast.
			Southern Forest Industries Inc.
			Southern Lumber.
			St Laurent Forest Products.
			Starfire Lumber Co.
			Steely Lumber Co Inc.
			Stimson Lumber.
			Summit Timber Co.
			Sundance Lumber.
			Superior Lumber.
			Swanson Superior Forest Products Inc.
			Swift Lumber.
			Tamarack Mill.
			Taylor Lumber & Treating Inc.
			Temple-Inland Forest Products.
			Thompson River Lumber.
			Three Rivers Timber.
			Thrift Brothers Lumber Co Inc.
			Timco Inc.
			Tolleson Lumber.
			Toney Lumber.
			TR Miller Mill Co.
			Tradewinds of Virginia Ltd.
			Travis Lumber Co.
			Tree Source Industries Inc.
			Tri-State Lumber.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			TTT Studs. United Brotherhood of Carpenters and Joiners. Viking Lumber Co. VP Kiser Lumber Co. Walton Lumber Co Inc. Warm Springs Forest Products. Westvaco Corp. Wilkins, Kaiser & Olsen Inc. WM Shepherd Lumber Co. WR Robinson Lumber Co Inc. Wrenn Brothers Inc. Wyoming Sawmills. Yakama Forest Products. Younce & Ralph Lumber Co Inc. Zip-O-Log Mills Inc.
C–122–841	701–TA–418	Carbon and Certain Alloy Steel Wire Rod/Canada.	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Nucor Steel-Nebraska (a division of Nucor Corp). Republic Technologies International. Rocky Mountain Steel Mills.
C–122–848	701–TA–430B.	Hard Red Spring Wheat/Canada ..	North Dakota Wheat Commission.
C–201–505	701–TA–265	Porcelain-on-Steel Cooking Ware/Mexico.	General Housewares.
C–201–810	701–TA–325	Cut-to-Length Carbon Steel Plate/Mexico.	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
C–307–804	303–TA–21 ..	Gray Portland Cement and Clinker/Venezuela.	Florida Crushed Stone. Southdown. Tarmac America.
C–307–808	303–TA–23 ..	Ferrosilicon/Venezuela	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Oil, Chemical and Atomic Workers (Local 389). Silicon Metaltech. United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171 and 12646).
C–333–401	701–TA–E	Cotton Shop Towels/Peru	No case at the Commission; Commerce service list identifies: Durafab. Kleen-Tex Industries. Lewis Eckert Robb. Milliken. Pavis & Harcourt.
C–351–037	104–TAA–21	Cotton Yarn/Brazil	American Yarn Spinners Association. Harriet & Henderson Yarns. LaFar Industries.
C–351–504	701–TA–249	Heavy Iron Construction Castings/Brazil.	Alhambra Foundry. Allegheny Foundry. Bingham & Taylor. Campbell Foundry. Charlotte Pipe & Foundry. Deeter Foundry.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			East Jordan Foundry.
			Le Baron Foundry.
			Municipal Castings.
			Neenah Foundry.
			Opelika Foundry.
			Pinkerton Foundry.
			Tyler Pipe.
			US Foundry & Manufacturing.
			Vulcan Foundry.
C–351–604	701–TA–269	Brass Sheet and Strip/Brazil	Allied Industrial Workers of America.
			American Brass.
			Bridgeport Brass.
			Chase Brass & Copper.
			Hussey Copper.
			International Association of Machinists & Aerospace.
			Workers.
			Mechanics Educational Society of America (Local 56).
			The Miller Company.
			Olin.
			Revere Copper Products.
			United Steelworkers of America.
C–351–818	701–TA–320	Cut-to-Length Carbon Steel Plate/Brazil.	Bethlehem Steel.
			California Steel Industries.
			CitiSteel USA Inc.
			Geneva Steel.
			Gulf States Steel.
			Inland Steel Industries.
			Lukens Steel.
			National Steel.
			Nextech.
			Sharon Steel.
			Theis Precision Steel.
			Thompson Steel.
			US Steel.
			United Steelworkers of America.
C–351–829	701–TA–384	Hot-Rolled Carbon Steel Flat Products/Brazil.	Acme Steel.
			Bethlehem Steel.
			California Steel Industries.
			Gallatin Steel.
			Geneva Steel.
			Gulf States Steel.
			Independent Steelworkers.
			IPSCO.
			Ispat/Inland.
			LTV Steel.
			National Steel.
			Nucor.
			Rouge Steel Co.
			Steel Dynamics.
			US Steel.
			United Steelworkers of America.
			WCI Steel.
			Weirton Steel.
			Wheeling-Pittsburgh Steel Corp.
C–351–833	701–TA–417	Carbon and Certain Alloy Steel Wire Rod/Brazil.	AmeriSteel.
			Birmingham Steel.
			Cascade Steel Rolling Mills.
			Connecticut Steel Corp.
			Co-Steel Raritan.
			GS Industries.
			Keystone Consolidated Industries.
			North Star Steel Texas.
			Nucor Steel-Nebraska (a division of Nucor Corp).
			Republic Technologies International.
			Rocky Mountain Steel Mills.
C–357–004	701–TA–A	Carbon Steel Wire Rod/Argentina	Atlantic Steel.
			Continental Steel.
			Georgetown Steel.
			North Star Steel.
			Raritan River Steel.
C–357–813	701–TA–402	Honey/Argentina	AH Meyer & Sons.
			Adee Honey Farms.
			Althoff Apiaries.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			American Beekeeping Federation.
			American Honey Producers Association.
			Anderson Apiaries.
			Arroyo Apiaries.
			Artesian Honey Producers.
			B Weaver Apiaries.
			Bailey Enterprises.
			Barkman Honey.
			Basler Honey Apiary.
			Beals Honey.
			Bears Paw Apiaries.
			Beaverhead Honey.
			Bee Biz.
			Bee Haven Honey.
			Belliston Brothers Apiaries.
			Big Sky Honey.
			Bill Rhodes Honey.
			Richard E Blake.
			Curt Bronnenbery.
			Brown's Honey Farms.
			Brumley's Bees.
			Buhmann Apiaries.
			Carys Honey Farms.
			Chaparrel Honey.
			Charles Apiaries.
			Mitchell Charles.
			Collins Honey.
			Conor Apiaries.
			Coy's Honey Farm.
			Dave Nelson Apiaries.
			Delta Bee.
			Eisele's Pollination & Honey.
			Ellingsoa's.
			Elliott Curtis & Sons.
			Charles L Emmons, Sr.
			Gause Honey.
			Gene Brandi Apiaries.
			Griffith Honey.
			Haff Apiaries.
			Hamilton Bee Farms.
			Hamilton Honey.
			Happie Bee.
			Harvest Honey.
			Harvey's Honey.
			Hiatt Honey.
			Hoffman Honey.
			Hollman Apiaries.
			Honey House.
			Honeybee Apiaries.
			Gary M Honl.
			Rand William Honl and Sydney Jo Honl.
			James R & Joann Smith Trust.
			Jaynes Bee Products.
			Johnston Honey Farms.
			Larry Johnston.
			Ke-An Honey.
			Kent Honeybees.
			Lake-Indianhead Honey Farms.
			Lamb's Honey Farm.
			Las Flores Apiaries.
			Mackrill Honey Farms & Sales.
			Raymond Marquette.
			Mason & Sons Honey.
			McCoy's Sunny South Apiaries.
			Merrimack Valley Apiaries & Evergreen Honey.
			Met 2 Honey Farm.
			Missouri River Honey.
			Mitchell Brothers Honey.
			Monda Honey Farm.
			Montana Dakota Honey.
			Northern Bloom Honey.
			Noye's Apiaries.
			Oakes Honey.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Oakley Honey Farms.
			Old Mill Apiaries.
			Opp Honey.
			Oro Dulce.
			Peterson's "Naturally Sweet" Honey.
			Potoczak Bee Farms.
			Price Apiaries.
			Pure Sweet Honey Farms.
			Robertson Pollination Service.
			Robson Honey.
			William Robson.
			Rosedale Apiaries.
			Ryan Apiaries.
			Schmidt Honey Farms.
			Simpson Apiaries.
			Sioux Honey Association.
			Smoot Honey.
			Solby Honey.
			Stahlman Apiaries.
			Steve E Parks Apiaries.
			Stroope Bee & Honey.
			T&D Honey Bee.
			Talbott's Honey.
			Terry Apiaries.
			Thompson Apiaries.
			Triple A Farm.
			Tropical Blossom Honey.
			Tubbs Apiaries.
			Venable Wholesale.
			Walter L Wilson Buzz 76 Apiaries.
			Wiebersiek Honey Farms.
			Wilmer Farms.
			Brent J Woodworth.
			Wooten's Golden Queens.
			Yaddof Apiaries.
C–357–815	701–TA–404	Hot-Rolled Steel Products/Argentina.	Bethlehem Steel.
			Gallatin Steel.
			Independent Steelworkers.
			IPSCO.
			LTV Steel.
			National Steel.
			Nucor.
			Rouge Steel Co.
			Steel Dynamics.
			US Steel.
			United Steelworkers of America.
			WCI Steel Inc.
			Weirton Steel.
			Wheeling-Pittsburgh Steel Corp.
C–401–401	701–TA–231	Cold-Rolled Carbon Steel Flat Products/Sweden.	Bethlehem Steel.
			Chaparral.
			US Steel.
C–401–804	701–TA–327	Cut-to-Length Carbon Steel Plate/Sweden.	Bethlehem Steel.
			California Steel Industries.
			CitiSteel USA Inc.
			Geneva Steel.
			Gulf States Steel.
			Inland Steel Industries.
			Lukens Steel.
			National Steel.
			Nextech.
			Sharon Steel.
			Theis Precision Steel.
			Thompson Steel.
			US Steel.
			United Steelworkers of America.
C–403–802	701–TA–302	Fresh and Chilled Atlantic Salmon/Norway.	Heritage Salmon.
			The Coalition for Fair Atlantic Salmon Trade.
C–408–046	104–TAA–7 ..	Sugar/EU	No petition at the Commission;

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Commerce service list identifies: AJ Yates. Alexander & Baldwin. American Farm Bureau Federation. American Sugar Cane League. American Sugarbeet Growers Association. Amstar Sugar. Florida Sugar Cane League. Florida Sugar Marketing and Terminal Association. H&R Brokerage. Hawaiian Agricultural Research Center. Leach Farms. Michigan Farm Bureau. Michigan Sugar. Rio Grande Valley Sugar Growers Association. Sugar Cane Growers Cooperative of Florida. Talisman Sugar. US Beet Sugar Association. United States Beet Sugar Association. United States Cane Sugar Refiners' Association.
C–412–815	701–TA–328	Cut-to-Length Carbon Steel Plate/ United Kingdom.	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
C–412–821	701–TA–412	Low Enriched Uranium/United Kingdom.	United States Enrichment Corp. USEC Inc.
C–421–601	701–TA–278	Fresh Cut Flowers/Netherlands	Burdette Coward. California Floral Council. Floral Trade Council. Florida Flower Association. Gold Coast Uanko Nursery. Hollandia Wholesale Florist. Manatee Fruit. Monterey Flower Farms. Topstar Nursery.
C–421–809	701–TA–411	Low Enriched Uranium/Netherlands.	United States Enrichment Corp. USEC Inc.
C–423–806	701–TA–319	Cut-to-Length Carbon Steel Plate/ Belgium.	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
C–423–809	701–TA–376	Stainless Steel Plate in Coils/Belgium.	Allegheny Ludlum. Armco Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
C–427–603	701–TA–270	Brass Sheet and Strip/France	Allied Industrial Workers of America. American Brass. Bridgeport Brass.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Chase Brass & Copper. Hussey Copper. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). The Miller Company. Olin. Revere Copper Products. United Steelworkers of America.
C–427–805	701–TA–315	Hot-Rolled Lead and Bismuth Carbon Steel. Products/France	Bethlehem Steel. Inland Steel Industries. USS/Kobe Steel.
C–427–810	701–TA–348	Corrosion-Resistant Carbon Steel Flat Products/France.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
C–427–815	701–TA–380	Stainless Steel Sheet and Strip/France.	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
C–427–817	701–TA–387	Cut-to-Length Carbon Steel Plate/France.	Bethlehem Steel. Geneva Steel. IPSCO Steel. National Steel. US Steel. United Steelworkers of America.
C–427–819	701–TA–409	Low Enriched Uranium/France	United States Enrichment Corp. USEC Inc.
C–428–817	701–TA–340	Cold-Rolled Carbon Steel Flat Products/Germany.	Armco Steel. Bethlehem Steel. California Steel Industries. Gulf States Steel. Inland Steel Industries. LTV Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
C–428–817	701–TA–349	Corrosion-Resistant Carbon Steel Flat Products/Germany.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
C–428–817	701–TA–322	Cut-to-Length Carbon Steel Plate/ Germany.	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
C–428–829	701–TA–410	Low Enriched Uranium/Germany ..	United States Enrichment Corp. USEC Inc.
C–437–805	701–TA–426	Sulfanilic Acid/Hungary	Nation Ford Chemical.
C–469–004	701–TA–178	Stainless Steel Wire Rod/Spain	AL Tech Specialty Steel. Armco Steel. Carpenter Technology. Colt Industries. Cyclops. Guterl Special Steel. Joslyn Stainless Steels. Republic Steel.
C–469–804	701–TA–326	Cut-to-Length Carbon Steel Plate/ Spain.	Bethlehem Steel. California Steel Industries. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America.
C–475–812	701–TA–355	Grain-Oriented Silicon Electrical Steel/Italy.	Allegheny Ludlum. Armco Steel. Butler Armco Independent Union. United Steelworkers of America. Zanesville Armco Independent Union.
C–475–815	701–TA–362	Seamless Pipe/Italy	Koppel Steel. Quanex. Timken. United States Steel.
C–475–817	701–TA–364	Oil Country Tubular Goods/Italy	IPSCO. Koppel Steel. Lone Star Steel. Maverick Tube. Newport Steel. North Star Steel. US Steel. USS/Kobe.
C–475–819	701–TA–365	Pasta/Italy	A Zerega's Sons. American Italian Pasta. Borden.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			D Merlino & Sons. Dakota Growers Pasta. Foulds. Gilster-Mary Lee. Gooch Foods. Hershey Foods. LaRinascente Macaroni Co. Pasta USA. Philadelphia Macaroni. ST Specialty Foods.
C–475–821	701–TA–373	Stainless Steel Wire Rod/Italy	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
C–475–823	701–TA–377	Stainless Steel Plate in Coils/Italy	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
C–475–825	701–TA–381	Stainless Steel Sheet and Strip/Italy.	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
C–475–827	701–TA–390	Cut-to-Length Carbon Steel Plate/Italy.	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. US Steel. United Steelworkers of America.
C–475–830	701–TA–413	Stainless Steel Bar/Italy	Carpenter Technology. Crucible Specialty Metals. Electralloy. Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
C–489–502	701–TA–253	Welded Carbon Steel Pipe and Tube/Turkey.	Allied Tube & Conduit. American Tube. Bernard Epps. Bock Industries. Bull Moose Tube. Central Steel Tube. Century Tube. Copperweld Tubing. Cyclops. Hughes Steel & Tube. Kaiser Steel. Laclede Steel. Maruichi American. Maverick Tube. Merchant Metals. Phoenix Steel. Pittsburgh Tube. Quanex. Sharon Tube. Southwestern Pipe. UNR-Leavitt. Welded Tube. Western Tube & Conduit. Wheatland Tube.
C–489–806	701–TA–366	Pasta/Turkey	A Zerega's Sons.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			American Italian Pasta. Borden. D Merlino & Sons. Dakota Growers Pasta. Foulds. Gilster-Mary Lee. Gooch Foods. Hershey Foods. LaRinascente Macaroni Co. Pasta USA. Philadelphia Macaroni. ST Specialty Foods.
C–507–501	N/A	Raw In-Shell Pistachios/Iran	Blackwell Land Co. Cal Pure Pistachios Inc. California Pistachio Commission. California Pistachio Orchards. Keenan Farms Inc. Kern Pistachio Hulling & Drying Co-Op. Los Rancheros de Poco Pedro. Pistachio Producers of California. TM Duche Nut Co Inc.
C–507–601	N/A	Roasted In-Shell Pistachios/Iran	Cal Pure Pistachios Inc. California Pistachio Commission. Keenan Farms Inc. Kern Pistachio Hulling & Drying Co-Op. Pistachio Producers of California. TM Duche Nut Co Inc.
C–508–605	701–TA–286	Industrial Phosphoric Acid/Israel	Albright & Wilson. FMC. Hydrite Chemical. Monsanto. Stauffer Chemical.
C–533–063	303–TA–13	Iron Metal Castings/India	Campbell Foundry. Le Baron Foundry. Municipal Castings. Neenah Foundry. Pinkerton Foundry. US Foundry & Manufacturing. Vulcan Foundry.
C–533–807	701–TA–318	Sulfanilic Acid/India	R–M Industries.
C–533–818	701–TA–388	Cut-to-Length Carbon Steel Plate/ India.	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. Tuscaloosa Steel. US Steel. United Steelworkers of America.
C–533–821	701–TA–405	Hot-Rolled Steel Products/India	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
C–533–825	701–TA–415	Polyethylene Terephthalate Film, Sheet and Strip. (PET Film)/India	DuPont Teijin Films. Mitsubishi Polyester Film LLC. SKC America Inc. Toray Plastics (America).
C–533–829	701–TA–432	Prestressed Concrete Steel Wire Strand/India.	American Spring Wire Corp. Insteel Wire Products Co. Sivaco Georgia LLC.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Strand Tech Martin Inc. Sumiden Wire Products Corp.
C–533–839	701–TA–437	Carbazole Violet Pigment 23/India	Allegheny Color Corp. Barker Fine Color Inc. Clariant Corp. Nation Ford Chemical Co. Sun Chemical Co.
C–533–844	701–TA–442	Certain Lined Paper School Supplies/India.	Fay Paper Products Inc. MeadWestvaco Consumer & Office Products. Norcom Inc. Pacon Corp. Roaring Spring Blank Book Co. Top Flight Inc. United Steel, Paper and Forestry, Rubber,. Manufacturing, Energy, Allied Industrial and Service. Workers International Union, AFL–CIO–CLC (USW).
C–535–001	701–TA–202	Cotton Shop Towels/Pakistan	Milliken.
C–549–818	701–TA–408	Hot-Rolled Steel Products/Thailand.	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
C–560–806	701–TA–389	Cut-to-Length Carbon Steel Plate/Indonesia.	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. Tuscaloosa Steel. US Steel. United Steelworkers of America.
C–560–813	701–TA–406	Hot-Rolled Steel Products/Indonesia.	Bethlehem Steel. Gallatin Steel. Independent Steelworkers. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
C–560–819	701–TA–443	Certain Lined Paper School Supplies/Indonesia.	Fay Paper Products Inc. MeadWestvaco Consumer & Office Products. Norcom Inc. Pacon Corp. Roaring Spring Blank Book Co. Top Flight Inc. United Steel, Paper and Forestry, Rubber,. Manufacturing, Energy, Allied Industrial and Service. Workers International Union, AFL–CIO–CLC (USW).
C–580–602	701–TA–267	Top-of-the-Stove Stainless Steel Cooking Ware/Korea.	Farberware. Regal Ware. Revere Copper & Brass. WearEver/Proctor Silex.
C–580–818	701–TA–342	Cold-Rolled Carbon Steel Flat Products/Korea.	Armco Steel. Bethlehem Steel.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			California Steel Industries. Gulf States Steel. Inland Steel Industries. LTV Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
C–580–818	701–TA–350	Corrosion-Resistant Carbon Steel Flat Products/Korea.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. US Steel. United Steelworkers of America. WCI Steel. Weirton Steel.
C–580–835	701–TA–382	Stainless Steel Sheet and Strip/Korea.	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
C–580–837	701–TA–391	Cut-to-Length Carbon Steel Plate/Korea.	Bethlehem Steel. CitiSteel USA Inc. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. Tuscaloosa Steel. US Steel. United Steelworkers of America.
C–580–842	701–TA–401	Structural Steel Beams/Korea	Northwestern Steel and Wire. Nucor. Nucor-Yamato Steel. TXI-Chaparral Steel. United Steelworkers of America.
C–580–851	701–TA–431	DRAMs and DRAM Modules/Korea.	Dominion Semiconductor LLC/Micron Technology Inc. Infineon Technologies Richmond LP. Micron Technology Inc.
C–583–604	701–TA–268	Top-of-the-Stove Stainless Steel Cooking Ware/Taiwan.	Farberware. Regal Ware. Revere Copper & Brass. WearEver/Proctor Silex.
C–791–806	701–TA–379	Stainless Steel Plate in Coils/South Africa.	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
C–791–810	701–TA–407	Hot-Rolled Steel Products/South Africa.	Bethlehem Steel. Gallatin Steel. Independent Steelworkers.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. US Steel. United Steelworkers of America. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp.
A–331–802	731–TA–1065	Certain Frozen Warmwater Shrimp and Prawns/Ecuador.	
A–351–838	731–TA–1063	Certain Frozen Warmwater Shrimp and Prawns/Brazil.	
A–533–840	731–TA–1066	Certain Frozen Warmwater Shrimp and Prawns/India.	
A–549–822	731–TA–1067	Certain Frozen Warmwater Shrimp and Prawns/Thailand.	
A–552–802	731–TA–1068	Certain Frozen Warmwater Shrimp and Prawns/Vietnam.	
A–570–893	731–TA–1064	Certain Frozen Warmwater Shrimp and Prawns/China.	
			Petitioners/Supporters for all six cases listed: Abadie, Al J. Abadie, Anthony. Abner, Charles. Abraham, Steven. Abshire, Gabriel J. Ackerman, Dale J. Acosta, Darryl L. Acosta, Jerry J Sr. Acosta, Leonard C. Acosta, Wilson Pula Sr. Adam, Denise T. Adam, Michael A. Adam, Richard B Jr Adam, Sherry P Adam, William E Adam, Alcide J Jr Adams, Dudley Adams, Elizabeth L Adams, Ervin Adams, Ervin Adams, George E Adams, Hursy J Adams, James Arthur Adams, Kelly Adams, Lawrence J Jr. Adams, Randy. Adams, Ritchie. Adams, Steven A. Adams, Ted J. Adams, Tim. Adams, Whitney P Jr. Agoff, Ralph J. Aguilar, Rikardo. Aguillard, Roddy G. Alario, Don Ray. Alario, Nat. Alario, Pete J. Alario, Timmy. Albert, Craig J. Albert, Junior J. Alexander, Everett O. Alexander, Robert F Jr. Alexie, Benny J. Alexie, Corkey A. Alexie, Dolphy. Alexie, Felix Jr. Alexie, Gwendolyn. Alexie, John J. Alexie, John V.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Alexie, Larry J Sr.
			Alexie, Larry Jr.
			Alexie, Vincent L Jr.
			Alexis, Barry S.
			Alexis, Craig W.
			Alexis, Micheal.
			Alexis, Monique.
			Alfonso, Anthony E Jr.
			Alfonso, Jesse.
			Alfonso, Nicholas.
			Alfonso, Paul Anthony.
			Alfonso, Randy.
			Alfonso, Terry S Jr.
			Alfonso, Vernon Jr.
			Alfonso, Yvette.
			Alimia, Angelo A Jr.
			Allemand, Dean J.
			Allen, Annie.
			Allen, Carolyn Sue.
			Allen, Jackie.
			Allen, Robin.
			Allen, Wayne.
			Allen, Wilbur L.
			Allen, Willie J III.
			Allen, Willie Sr.
			Alphonso, John.
			Ancalade, Leo J.
			Ancar, Claudene.
			Ancar, Jerry T.
			Ancar, Joe C.
			Ancar, Merlin Sr.
			Ancar, William Sr.
			Ancelet, Gerald Ray.
			Anderson, Andrew David.
			Anderson, Ernest W.
			Anderson, Jerry.
			Anderson, John.
			Anderson, Lynwood.
			Anderson, Melinda Rene.
			Anderson, Michael Brian.
			Anderson, Ronald L Sr.
			Anderson, Ronald Louis Jr.
			Andonie, Miguel.
			Andrews, Anthony R.
			Andry, Janice M.
			Andry, Rondey S.
			Angelle, Louis.
			Anglada, Eugene Sr.
			Ansardi, Lester.
			Anselmi, Darren.
			Aparicio, Alfred.
			Aparicio, David.
			Aparicio, Ernest.
			Arabie, Georgia P.
			Arabie, Joseph.
			Arcement, Craig J.
			Arcement, Lester C.
			Arcemont, Donald Sr.
			Arceneaux, Matthew J.
			Arceneaux, Michael K.
			Areas, Christopher J.
			Armbruster, John III.
			Armbruster, Paula D.
			Armstrong, Jude Jr.
			Arnesen, George.
			Arnold, Lonnie L Jr.
			Arnona, Joseph T.
			Arnondin, Robert.
			Arthur, Brenda J.
			Assavedo, Floyd.
			Atwood, Gregory Kenneth.
			Au, Chow D.
			Au, Robert.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Aucoin, Dewey F.
			Aucoin, Earl.
			Aucoin, Laine A.
			Aucoin, Perry J.
			Austin, Dennis.
			Austin, Dennis J.
			Authement, Brice.
			Authement, Craig L.
			Authement, Dion J.
			Authement, Gordon.
			Authement, Lance M.
			Authement, Larry.
			Authement, Larry Sr.
			Authement, Roger J.
			Authement, Sterling P.
			Autin, Bobby.
			Autin, Bruce J.
			Autin, Kenneth D.
			Autin, Marvin J.
			Autin, Paul F Jr.
			Autin, Roy.
			Avenel, Albert J Jr.
			Ba Wells, Tran Thi.
			Babb, Conny.
			Babin, Brad.
			Babin, Joey L.
			Babin, Klint.
			Babin, Molly.
			Babin, Norman J.
			Babineaux, Kirby.
			Babineaux, Vicki.
			Bach, Ke Van.
			Bach, Reo Long.
			Backman, Benny.
			Badeaux, Todd.
			Baham, Dewayne.
			Bailey, Albert.
			Bailey, Antoine III.
			Bailey, David B Sr.
			Bailey, Don.
			Baker, Clarence.
			Baker, Donald Earl.
			Baker, James.
			Baker, Kenneth.
			Baker, Ronald J.
			Balderas, Antonio.
			Baldwin, Richard Prentiss.
			Ballard, Albert.
			Ballas, Barbara A.
			Ballas, Charles J.
			Baltz, John F.
			Ban, John.
			Bang, Bruce K.
			Barbaree, Joe W.
			Barbe, Mark A and Cindy.
			Barber, Louie W Jr.
			Barber, Louie W Sr.
			Barbier, Percy T.
			Barbour, Raymond A.
			Bargainear, James E.
			Barisich, George A.
			Barisich, Joseph J.
			Barnette, Earl.
			Barnhill, Nathan.
			Barrios, Clarence.
			Barrios, Corbert J.
			Barrios, Corbert M.
			Barrios, David.
			Barrios, John.
			Barrios, Shane James.
			Barrois, Angela Gail.
			Barrois, Dana A.
			Barrois, Tracy James.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Barrois, Wendell Jude Jr.
			Barthe, Keith Sr.
			Barthelemy, Allen M.
			Barthelemy, John A.
			Barthelemy, Rene T Sr.
			Barthelemy, Walter A Jr.
			Bartholomew, Mitchell.
			Bartholomew, Neil W.
			Bartholomew, Thomas E.
			Bartholomew, Wanda C.
			Basse, Donald J Sr.
			Bates, Mark.
			Bates, Ted Jr.
			Bates, Vernon Jr.
			Battle, Louis.
			Baudoin, Drake J.
			Baudoin, Murphy A.
			Baudouin, Stephen.
			Bauer, Gary.
			Baye, Glen P.
			Bean, Charles A.
			Beazley, William E.
			Becnel, Glenn J.
			Becnel, Kent.
			Beecher, Carold F.
			Beechler, Ronald.
			Bell, James E.
			Bell, Ronald A.
			Bellanger, Arnold.
			Bellanger, Clifton.
			Bellanger, Scott J.
			Belsome, Derrell M.
			Belsome, Karl M.
			Bennett, Cecil A Jr.
			Bennett, Gary Lynn.
			Bennett, Irin Jr.
			Bennett, James W Jr.
			Bennett, Louis.
			Benoit, Francis J.
			Benoit, Nicholas L.
			Benoit, Paula T.
			Benoit, Tenna J Jr.
			Benton, Walter T.
			Berger, Ray W.
			Bergeron, Alfred Scott.
			Bergeron, Jeff.
			Bergeron, Nolan A.
			Bergeron, Ulysses J.
			Bernard, Lamont L.
			Berner, Mark J.
			Berthelot, Gerard J Sr.
			Berthelot, James A.
			Berthelot, Myron J.
			Bertrand, Jeri C.
			Beverung, Keith J.
			Bianchini, Raymond W.
			Bickham, Leo E.
			Bienvenu, Charles.
			Biggs, Jerry W Sr.
			Bigler, Delbert.
			Billington, Richard.
			Billiot, Alfredia.
			Billiot, Arthur.
			Billiot, Aubrey.
			Billiot, Barell J.
			Billiot, Betty.
			Billiot, Bobby J.
			Billiot, Brian K.
			Billiot, Cassidy.
			Billiot, Charles Sr.
			Billiot, Chris J Sr.
			Billiot, E J E.
			Billiot, Earl W Sr.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Billiot, Ecton L.
			Billiot, Emary.
			Billiot, Forest Jr.
			Billiot, Gerald.
			Billiot, Harold J.
			Billiot, Jacco A.
			Billiot, Jake A.
			Billiot, James Jr.
			Billiot, Joseph S Jr.
			Billiot, Laurence V.
			Billiot, Leonard F Jr.
			Billiot, Lisa.
			Billiot, Mary L.
			Billiot, Paul J Sr.
			Billiot, Shirley L.
			Billiot, Steve M.
			Billiot, Thomas Adam.
			Billiot, Thomas Sr.
			Billiot, Wenceslaus Jr.
			Billiott, Alexander J.
			Biron, Yale.
			Black, William C.
			Blackston, Larry E.
			Blackwell, Wade H III.
			Blackwell, Wade H Jr.
			Blanchard, Albert.
			Blanchard, Andrew J.
			Blanchard, Billy J.
			Blanchard, Cyrus.
			Blanchard, Daniel A.
			Blanchard, Dean.
			Blanchard, Douglas Jr.
			Blanchard, Dwayne.
			Blanchard, Elgin.
			Blanchard, Gilbert.
			Blanchard, Jade.
			Blanchard, James.
			Blanchard, John F Jr.
			Blanchard, Katie.
			Blanchard, Kelly.
			Blanchard, Matt Joseph.
			Blanchard, Michael.
			Blanchard, Quentin Timothy.
			Blanchard, Roger Sr.
			Blanchard, Walton H Jr.
			Bland, Quyen T.
			Blouin, Roy A.
			Blume, Jack Jr.
			Bodden, Arturo.
			Bodden, Jasper.
			Bollinger, Donald E.
			Bolotte, Darren W.
			Bolton, Larry F.
			Bondi, Paul J.
			Bonvillain, Jimmy J.
			Bonvillian, Donna M.
			Boone, Clifton Felix.
			Boone, Donald F II.
			Boone, Donald F III (Ricky).
			Boone, Gregory T.
			Boquet, Noriss P Jr.
			Boquet, Wilfred Jr.
			Bordelon, Glenn Sr.
			Bordelon, James P.
			Bordelon, Shelby P.
			Borden, Benny.
			Borne, Crystal.
			Borne, Dina L.
			Borne, Edward Joseph Jr.
			Borne, Edward Sr.
			Bosarge, Hubert Lawrence.
			Bosarge, Robert.
			Bosarge, Sandra.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Bosarge, Steve.
			Boudlauch, Durel A Jr.
			Boudoin, Larry Terrell.
			Boudoin, Nathan.
			Boudreaux, Brent J.
			Boudreaux, Elvin J III.
			Boudreaux, James C Jr.
			Boudreaux, James N.
			Boudreaux, Jessie.
			Boudreaux, Leroy A.
			Boudreaux, Mark.
			Boudreaux, Paul Sr.
			Boudreaux, Richard D.
			Boudreaux, Ronald Sr.
			Boudreaux, Sally.
			Boudreaux, Veronica.
			Boudwin, Dwayne.
			Boudwin, Jewel James Sr.
			Boudwin, Wayne.
			Bouise, Norman.
			Boulet, Irwin J Jr.
			Boullion, Debra.
			Bourg, Allen T.
			Bourg, Benny.
			Bourg, Chad J.
			Bourg, Channon.
			Bourg, Chris.
			Bourg, Douglas.
			Bourg, Glenn A.
			Bourg, Jearmie Sr.
			Bourg, Kent A.
			Bourg, Mark.
			Bourg, Nolan P.
			Bourg, Ricky J.
			Bourgeois, Albert P.
			Bourgeois, Brian J Jr.
			Bourgeois, Daniel.
			Bourgeois, Dwayne.
			Bourgeois, Jake.
			Bourgeois, Johnny M.
			Bourgeois, Johnny M Jr.
			Bourgeois, Leon A.
			Bourgeois, Louis A.
			Bourgeois, Merrie E.
			Bourgeois, Randy P.
			Bourgeois, Reed.
			Bourgeois, Webley.
			Bourn, Chris.
			Bourque, Murphy Paul.
			Bourque, Ray.
			Bousegard, Duvic Jr.
			Boutte, Manuel J Jr.
			Bouvier, Colbert A II.
			Bouzigard, Dale J.
			Bouzigard, Edgar J III.
			Bouzigard, Eeris.
			Bowers, Harold.
			Bowers, Tommy.
			Boyd, David E Sr.
			Boyd, Elbert.
			Boykin, Darren L.
			Boykin, Thomas Carol.
			Bradley, James.
			Brady, Brian.
			Brandhurst, Kay.
			Brandhurst, Ray E Sr.
			Brandhurst, Raymond J.
			Braneff, David G.
			Brannan, William P.
			Branom, Donald James Jr.
			Braud, James M.
			Brazan, Frank J.
			Breaud, Irvin F Jr.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Breaux, Barbara.
			Breaux, Brian J.
			Breaux, Charlie M.
			Breaux, Clifford.
			Breaux, Colin E.
			Breaux, Daniel Jr.
			Breaux, Larry J.
			Breaux, Robert J Jr.
			Breaux, Shelby.
			Briscoe, Robert F Jr.
			Britsch, L D Jr.
			Broussard, Dwayne E.
			Broussard, Eric.
			Broussard, Keith.
			Broussard, Larry.
			Broussard, Mark A.
			Broussard, Roger David.
			Broussard, Roger R.
			Broussard, Steve P.
			Brown, Cindy B.
			Brown, Colleen.
			Brown, Donald G.
			Brown, John W.
			Brown, Paul R.
			Brown, Ricky.
			Brown, Toby H.
			Bruce, Adam J.
			Bruce, Adam J Jr.
			Bruce, Bob R.
			Bruce, Daniel M Sr.
			Bruce, Eli T Sr.
			Bruce, Emelda L.
			Bruce, Gary J Sr.
			Bruce, James P.
			Bruce, Lester J Jr.
			Bruce, Margie L.
			Bruce, Mary P.
			Bruce, Nathan.
			Bruce, Robert.
			Bruce, Russell.
			Brudnock, Peter Sr.
			Brunet, Elton J.
			Brunet, Joseph A.
			Brunet, Joseph A.
			Brunet, Levy J Jr.
			Brunet, Raymond Sr.
			Bryan, David N.
			Bryant, Ina Fay V.
			Bryant, Jack D Sr.
			Bryant, James Larry.
			Buford, Ernest.
			Bui, Ben.
			Bui, Dich.
			Bui, Dung Thi.
			Bui, Huong T.
			Bui, Ngan.
			Bui, Nhuan.
			Bui, Nuoi Van.
			Bui, Tai.
			Bui, Tieu.
			Bui, Tommy.
			Bui, Xuan and De Nguyen.
			Bui, Xuanmai.
			Bull, Delbert E.
			Bundy, Belvina (Kenneth).
			Bundy, Kenneth Sr.
			Bundy, Nicky.
			Bundy, Ronald J.
			Bundy, Ronnie J.
			Buquet, John Jr.
			Buras, Clayton M.
			Buras, Leander.
			Buras, Robert M Jr.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Buras, Waylon J.
			Burlett, Elliott C.
			Burlett, John C Jr.
			Burnell, Charles B.
			Burnell, Charles R.
			Burnham, Deanna Lea.
			Burns, Stuart E.
			Burroughs, Lindsey Hilton Jr.
			Burton, Ronnie.
			Busby, Hardy E.
			Busby, Tex H.
			Busch, RC.
			Bush, Robert A.
			Bussey, Tyler.
			Butcher, Dorothy.
			Butcher, Rocky J.
			Butler, Albert A.
			Butler, Aline M.
			Bychurch, Johnny.
			Bychurch, Johnny Jr.
			Cabanilla, Alex.
			Caboz, Jose Santos.
			Cacioppo, Anthony Jr.
			Caddell, David.
			Cadiere, Mae Quick.
			Cadiere, Ronald J.
			Cahill, Jack.
			Caillouet, Stanford Jr.
			Caison, Jerry Lane Jr.
			Calcagno, Stephen Paul Sr.
			Calderone, John S.
			Callahan, Gene P Sr.
			Callahan, Michael J.
			Callahan, Russell.
			Callais, Ann.
			Callais, Franklin D.
			Callais, Gary D.
			Callais, Michael.
			Callais, Michael.
			Callais, Sandy.
			Callais, Terrence.
			Camardelle, Anna M.
			Camardelle, Chris J.
			Camardelle, David.
			Camardelle, Edward J III.
			Camardelle, Edward J Jr.
			Camardelle, Harris A.
			Camardelle, Knowles.
			Camardelle, Noel T.
			Camardelle, Tilman J.
			Caminita, John A III.
			Campo, Donald Paul.
			Campo, Kevin.
			Campo, Nicholas J.
			Campo, Roy.
			Campo, Roy Sr.
			Camus, Ernest M Jr.
			Canova, Carl.
			Cantrelle, Alvin.
			Cantrelle, Eugene J.
			Cantrelle, Otis A Sr.
			Cantrelle, Otis Jr (Buddy).
			Cantrelle, Philip A.
			Cantrelle, Tate Joseph.
			Canty, Robert Jamies.
			Cao, Anna.
			Cao, Billy.
			Cao, Billy Viet.
			Cao, Binh Quang.
			Cao, Chau.
			Cao, Dan Dien.
			Cao, Dung Van.
			Cao, Gio Van.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Cao, Heip A.
			Cao, Linh Huyen.
			Cao, Nghia Thi.
			Cao, Nhieu V.
			Cao, Si-Van.
			Cao, Thanh Kim.
			Cao, Tuong Van.
			Carinhas, Jack G Jr.
			Carl, Joseph Allen.
			Carlos, Gregory.
			Carlos, Irvin.
			Carmadelle, David J.
			Carmadelle, Larry G.
			Carmadelle, Rudy J.
			Carrere, Anthony T Jr.
			Carrier, Larry J.
			Caruso, Michael.
			Casanova, David W Sr.
			Cassagne, Alphonse G III.
			Cassagne, Alphonse G IV.
			Cassidy, Mark.
			Casso, Joseph.
			Castelin, Gilbert.
			Castelin, Sharon.
			Castellanos, Raul L.
			Castelluccio, John A Jr.
			Castille, Joshua.
			Caulfield, Adolph Jr.
			Caulfield, Hope.
			Caulfield, James M Jr.
			Caulfield, Jean.
			Cepriano, Salvador.
			Cerdes, Julius W Jr.
			Cerise, Marla.
			Chabert, John.
			Chaisson, Dean J.
			Chaisson, Henry.
			Chaisson, Vincent A.
			Chaix, Thomas B III.
			Champagne, Brian.
			Champagne, Harold P.
			Champagne, Kenton.
			Champagne, Leon J.
			Champagne, Leroy A.
			Champagne, Lori.
			Champagne, Timmy D.
			Champagne, Willard.
			Champlin, Kim J.
			Chance, Jason R.
			Chancey, Jeff.
			Chapa, Arturo.
			Chaplin Robert G Sr.
			Chaplin, Saxby Stowe.
			Charles, Christopher.
			Charpentier, Allen J.
			Charpentier, Alvin J.
			Charpentier, Daniel J.
			Charpentier, Lawrence.
			Charpentier, Linton.
			Charpentier, Melanie.
			Charpentier, Murphy Jr.
			Charpentier, Robert J.
			Chartier, Michelle.
			Chau, Minh Huu.
			Chauvin, Anthony.
			Chauvin, Anthony P Jr.
			Chauvin, Carey M.
			Chauvin, David James.
			Chauvin, James E.
			Chauvin, Kimberly Kay.
			Cheeks, Alton Bruce.
			Cheers, Elwood.
			Chenier, Ricky.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Cheramie, Alan.
			Cheramie, Alan J Jr.
			Cheramie, Alton J.
			Cheramie, Berwick Jr.
			Cheramie, Berwick Sr.
			Cheramie, Daniel James Sr.
			Cheramie, Danny.
			Cheramie, David J.
			Cheramie, David P.
			Cheramie, Dickey J.
			Cheramie, Donald.
			Cheramie, Enola.
			Cheramie, Flint.
			Cheramie, Harold L.
			Cheramie, Harry J Sr.
			Cheramie, Harry Jr.
			Cheramie, Harvey Jr.
			Cheramie, Harvey Sr.
			Cheramie, Henry J Sr.
			Cheramie, James A.
			Cheramie, James P.
			Cheramie, Jody P.
			Cheramie, Joey J.
			Cheramie, Johnny.
			Cheramie, Joseph A.
			Cheramie, Lee Allen.
			Cheramie, Linton J.
			Cheramie, Mark A.
			Cheramie, Murphy J.
			Cheramie, Nathan A Sr.
			Cheramie, Neddy P.
			Cheramie, Nicky J.
			Cheramie, Ojess M.
			Cheramie, Paris P.
			Cheramie, Robbie.
			Cheramie, Rodney E Jr.
			Cheramie, Ronald.
			Cheramie, Roy.
			Cheramie, Roy A.
			Cheramie, Sally K.
			Cheramie, Terry J.
			Cheramie, Terry Jr.
			Cheramie, Timmy.
			Cheramie, Tina.
			Cheramie, Todd M.
			Cheramie, Tommy.
			Cheramie, Wayne A.
			Cheramie, Wayne A Jr.
			Cheramie, Wayne F Sr.
			Cheramie, Wayne J.
			Cheramie, Webb Jr.
			Chevalier, Mitch.
			Chew, Thomas J.
			Chhun, Samantha.
			Chiasson, Jody J.
			Chiasson, Manton P Jr.
			Chiasson, Michael P.
			Childress, Gordon.
			Chisholm, Arthur.
			Chisholm, Henry Jr.
			Christen, David Jr.
			Christen, Vernon.
			Christmas, John T Jr.
			Chung, Long V.
			Ciaccio, Vance.
			Cibilic, Bozidar.
			Cieutat, John.
			Cisneros, Albino.
			Ciuffi, Michael L.
			Clark, James M.
			Clark, Jennings.
			Clark, Mark A.
			Clark, Ricky L.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Cobb, Michael A.
			Cochran, Jimmy.
			Coleman, Ernest.
			Coleman, Freddie Jr.
			Colletti, Rodney A.
			Collier, Ervin J.
			Collier, Wade.
			Collins, Bernard J.
			Collins, Bruce J Jr.
			Collins, Donald.
			Collins, Earline.
			Collins, Eddie F Jr.
			Collins, Jack.
			Collins, Jack.
			Collins, Julius.
			Collins, Lawson Bruce Sr.
			Collins, Lindy S Jr.
			Collins, Logan A Jr.
			Collins, Robert.
			Collins, Timmy P.
			Collins, Vendon Jr.
			Collins, Wilbert Jr.
			Collins, Woodrow.
			Colson, Chris and Michelle.
			Comardelle, Michael J.
			Comeaux, Allen J.
			Compeaux, Curtis J.
			Compeaux, Gary P.
			Compeaux, Harris.
			Cone, Jody.
			Contreras, Mario.
			Cook, Edwin A Jr.
			Cook, Edwin A Sr.
			Cook, Joshua.
			Cook, Larry R Sr.
			Cook, Scott.
			Cook, Theodore D.
			Cooksey, Ernest Neal.
			Cooper, Acy J III.
			Cooper, Acy J Jr.
			Cooper, Acy Sr.
			Cooper, Christopher W.
			Cooper, Jon C.
			Cooper, Marla F.
			Cooper, Vincent J.
			Copeman, John R.
			Corley, Ronald E.
			Cornett, Eddie.
			Cornwall, Roger.
			Cortez, Brenda M.
			Cortez, Cathy.
			Cortez, Curtis.
			Cortez, Daniel P.
			Cortez, Edgar.
			Cortez, Keith J.
			Cortez, Leslie J.
			Cosse, Robert K.
			Coston, Clayton.
			Cotsovolos, John Gordon.
			Coulon, Allen J Jr.
			Coulon, Allen J Sr.
			Coulon, Amy M.
			Coulon, Cleveland F.
			Coulon, Darrin M.
			Coulon, Don.
			Coulon, Earline N.
			Coulon, Ellis Jr.
			Coursey, John W.
			Courville, Ronnie P.
			Cover, Darryl L.
			Cowdrey, Michael Dudley.
			Cowdrey, Michael Nelson.
			Crain, Michael T.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Crawford, Bryan D.
			Crawford, Steven J.
			Creamer, Quention.
			Credeur, Todd A Sr.
			Credeur, Tony J.
			Creppel, Carlton.
			Creppel, Catherine.
			Creppel, Craig Anthony.
			Creppel, Freddy.
			Creppel, Isadore Jr.
			Creppel, Julinne G III.
			Creppel, Kenneth.
			Creppel, Kenneth.
			Creppel, Nathan J Jr.
			Creppell, Michel P.
			Cristina, Charles J.
			Crochet, Sterling James.
			Crochet, Tony J.
			Crosby, Benjy J.
			Crosby, Darlene.
			Crosby, Leonard W Jr.
			Crosby, Ted J.
			Crosby, Thomas.
			Crum, Lonnie.
			Crum, Tommy Lloyd.
			Cruz, Jesus.
			Cubbage, Melinda T.
			Cuccia, Anthony J.
			Cuccia, Anthony J Jr.
			Cuccia, Kevin.
			Cumbie, Bryan E.
			Cure, Mike.
			Curole, Keith J.
			Curole, Kevin P.
			Curole, Margaret B.
			Curole, Willie P Jr.
			Cutrer, Jason C.
			Cvitanovich, T.
			Daigle, Alfred.
			Daigle, Cleve and Nona.
			Daigle, David John.
			Daigle, EJ.
			Daigle, Glenn.
			Daigle, Jamie J.
			Daigle, Jason.
			Daigle, Kirk.
			Daigle, Leonard P.
			Daigle, Lloyd.
			Daigle, Louis J.
			Daigle, Melanie.
			Daigle, Michael J.
			Daigle, Michael Wayne and JoAnn.
			Daisy, Jeff.
			Dale, Cleveland L.
			Dang, Ba.
			Dang, Dap.
			Dang, David.
			Dang, Duong.
			Dang, Khang.
			Dang, Khang and Tam Phan.
			Dang, Loan Thi.
			Dang, Minh.
			Dang, Minh Van.
			Dang, Son.
			Dang, Tao Kevin.
			Dang, Thang Duc.
			Dang, Thien Van.
			Dang, Thuong.
			Dang, Thuy.
			Dang, Van D.
			Daniels, David.
			Daniels, Henry.
			Daniels, Leslie.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Danos, Albert Sr.
			Danos, James A.
			Danos, Jared.
			Danos, Oliver J.
			Danos, Ricky P.
			Danos, Rodney.
			Danos, Timothy A.
			d'Antignac, Debi.
			d'Antignac, Jack.
			Dantin, Archie A.
			Dantin, Mark S Sr.
			Dantin, Stephen Jr.
			Dao, Paul.
			Dao, Vang.
			Dao-Nguyen, Chrysti.
			Darda, Albert L Jr.
			Darda, Gertrude.
			Darda, Herbert.
			Darda, J C.
			Darda, Jeremy.
			Darda, Tammy.
			Darda, Trudy.
			Dardar, Alvin.
			Dardar, Basile J.
			Dardar, Basile Sr.
			Dardar, Cindy.
			Dardar, David.
			Dardar, Donald S.
			Dardar, Edison J Sr.
			Dardar, Gayle Picou.
			Dardar, Gilbert B.
			Dardar, Gilbert Sr.
			Dardar, Isadore J Jr.
			Dardar, Jacqueline.
			Dardar, Jonathan M.
			Dardar, Lanny.
			Dardar, Larry J.
			Dardar, Many.
			Dardar, Neal A.
			Dardar, Norbert.
			Dardar, Patti V.
			Dardar, Percy B Sr.
			Dardar, Rose.
			Dardar, Rusty J.
			Dardar, Samuel.
			Dardar, Summersgill.
			Dardar, Terry P.
			Dardar, Toney M Jr.
			Dardar, Toney Sr.
			Dargis, Stephen M.
			Dassau, Louis.
			David, Philip J Jr.
			Davis, Cliff.
			Davis, Daniel A.
			Davis, Danny A.
			Davis, James.
			Davis, John W.
			Davis, Joseph D.
			Davis, Michael Steven.
			Davis, Ronald B.
			Davis, William T Jr.
			Davis, William Theron.
			Dawson, JT.
			de la Cruz, Avery T.
			Dean, Ilene L.
			Dean, John N.
			Dean, Stephen.
			DeBarge, Brian K.
			DeBarge, Sherry.
			DeBarge, Thomas W.
			Decoursey, John.
			Dedon, Walter.
			Deere, Daryl.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Deere, David E.
			Deere, Dennis H.
			Defelice, Robin.
			Defelice, Tracie L.
			DeHart, Ashton J Sr.
			Dehart, Bernard J.
			Dehart, Blair.
			Dehart, Clevis.
			Dehart, Clevis Jr.
			DeHart, Curtis P Sr.
			Dehart, Eura Sr.
			Dehart, Ferrell John.
			Dehart, Leonard M.
			DeHart, Troy.
			DeJean, Chris N Jr.
			DeJean, Chris N Sr.
			Dekemel, Bonnie D.
			Dekemel, Wm J Jr.
			Delande, Paul.
			Delande, Ten Chie.
			Delatte, Michael J Sr.
			Delaune, Kip M.
			Delaune, Thomas J.
			Delaune, Todd J.
			Delcambre, Carroll A.
			Delgado, Jesse.
			Delino, Carlton.
			Delino, Lorene.
			Deloach, Stephen W Jr.
			DeMoll, Herman J Jr.
			DeMoll, Herman J Sr.
			DeMoll, James C Jr.
			DeMoll, Ralph.
			DeMoll, Robert C.
			DeMoll, Terry R.
			DeMolle, Freddy.
			DeMolle, Otis.
			Dennis, Fred.
			Denty, Steve.
			Deroche, Barbara H.
			Derouen, Caghe.
			Deshotel, Rodney.
			DeSilvey, David.
			Despaux, Byron J.
			Despaux, Byron J Jr.
			Despaux, Glen A.
			Despaux, Ken.
			Despaux, Kerry.
			Despaux, Suzanna.
			Detillier, David E.
			DeVaney, Bobby C Jr.
			Dickey, Wesley Frank.
			Diep, Vu.
			Dinger, Anita.
			Dinger, Corbert Sr.
			Dinger, Eric.
			Dingler, Mark H.
			Dinh, Chau Thanh.
			Dinh, Khai Duc.
			Dinh, Lien.
			Dinh, Toan.
			Dinh, Vincent.
			Dion, Ernest.
			Dion, Paul A.
			Dion, Thomas Autry.
			Disalvo, Paul A.
			Dismuke, Robert E Sr.
			Ditcharo, Dominick III.
			Dixon, David.
			Do, Cuong V.
			Do, Dan C.
			Do, Dung V.
			Do, Hai Van.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Do, Hieu. Do, Hung V. Do, Hung V. Do, Johnny. Do, Kiet Van. Do, Ky Hong. Do, Ky Quoc. Do, Lam. Do, Liet Van. Do, Luong Van. Do, Minh Van. Do, Nghiep Van. Do, Ta. Do, Ta Phon. Do, Than Viet. Do, Thanh V. Do, Theo Van. Do, Thien Van. Do, Tinh A. Do, Tri. Do, Vi V. Doan, Anh Thi. Doan, Joseph. Doan, Mai. Doan, Minh. Doan, Ngoc. Doan, Tran Van. Domangue, Darryl. Domangue, Emile. Domangue, Mary. Domangue, Michael. Domangue, Paul. Domangue, Ranzell Sr. Domangue, Stephen. Domangue, Westley. Domingo, Carolyn. Dominique, Amy R. Dominque, Gerald R. Donini, Ernest N. Donnelly, David C. Donohue, Holly M. Dooley, Denise F. Dopson, Craig B. Dore, Presley J. Dore, Preston J Jr. Dorr, Janthan C Jr. Doucet, Paul J Sr. Downey, Colleen. Doxey, Robert Lee Sr. Doxey, Ruben A. Doxey, William L. Doyle, John T. Drawdy, John Joseph. Drury, Bruce W Jr. Drury, Bruce W Sr. Drury, Bryant J. Drury, Eric S. Drury, Helen M. Drury, Jeff III. Drury, Kevin. Drury, Kevin S Sr. Drury, Steve R. Drury, Steven J. Dubberly, James F. Dubberly, James Michael. Dubberly, James Michael Jr. Dubberly, John J. Dubois, Euris A. Dubois, John D Jr. Dubois, Lonnie J. Duck, Kermit Paul. Dudenhefer, Anthony. Dudenhefer, Connie S.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Dudenhefer, Eugene A.
			Dudenhefer, Milton J Jr.
			Duet, Brad J.
			Duet, Darrel A.
			Duet, Guy J.
			Duet, Jace J.
			Duet, Jay.
			Duet, John P.
			Duet, Larson.
			Duet, Ramie.
			Duet, Raymond J.
			Duet, Tammy B.
			Duet, Tyrone.
			Dufrene, Archie.
			Dufrene, Charles.
			Dufrene, Curt F.
			Dufrene, Elson A.
			Dufrene, Eric F.
			Dufrene, Eric F Jr.
			Dufrene, Eric John.
			Dufrene, Golden J.
			Dufrene, Jeremy M.
			Dufrene, Juliette B.
			Dufrene, Leroy J.
			Dufrene, Milton J.
			Dufrene, Ronald A Jr.
			Dufrene, Ronald A Sr.
			Dufrene, Scottie M.
			Dufrene, Toby.
			Dugar, Edward A II.
			Dugas, Donald John.
			Dugas, Henri J IV.
			Duhe, Greta.
			Duhe, Robert.
			Duhon, Charles.
			Duhon, Douglas P.
			Duncan, Faye E.
			Duncan, Gary.
			Duncan, Loyde C.
			Dunn, Bob.
			Duong, Billy.
			Duong, Chamroeun.
			Duong, EM.
			Duong, Ho Tan Phi.
			Duong, Kong.
			Duong, Mau.
			Duplantis, Blair P.
			Duplantis, David.
			Duplantis, Frankie J.
			Duplantis, Maria.
			Duplantis, Teddy W.
			Duplantis, Wedgir J Jr.
			Duplessis, Anthony James Sr.
			Duplessis, Bonnie S.
			Duplessis, Clarence R.
			Dupre, Brandon P.
			Dupre, Cecile.
			Dupre, David A.
			Dupre, Davis J Jr.
			Dupre, Easton J.
			Dupre, Jimmie Sr.
			Dupre, Linward P.
			Dupre, Mary L.
			Dupre, Michael J.
			Dupre, Michael J Jr.
			Dupre, Randall P.
			Dupre, Richard A.
			Dupre, Rudy P.
			Dupre, Ryan A.
			Dupre, Tony J.
			Dupre, Troy A.
			Dupree, Bryan.
			Dupree, Derrick.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Dupree, Malcolm J Sr.
			Dupuis, Clayton J.
			Durand, Walter Y.
			Dusang, Melvin A.
			Duval, Denval H Sr.
			Duval, Wayne.
			Dyer, Nadine D.
			Dyer, Tony.
			Dykes, Bert L.
			Dyson, Adley L Jr.
			Dyson, Adley L Sr.
			Dyson, Amy.
			Dyson, Casandra.
			Dyson, Clarence III.
			Dyson, Jimmy Jr.
			Dyson, Jimmy L Sr.
			Dyson, Kathleen.
			Dyson, Maricela.
			Dyson, Phillip II.
			Dyson, Phillip Sr.
			Dyson, William.
			Eckerd, Bill.
			Edens, Angela Blake.
			Edens, Donnie.
			Edens, Jeremy Donald.
			Edens, Nancy M.
			Edens, Steven L.
			Edens, Timothy Dale.
			Edgar, Daniel.
			Edgar, Joey.
			Edgerson, Roosevelt.
			Edwards,Tommy W III.
			Ellerbee, Jody Duane.
			Ellison, David Jr.
			Encalade, Alfred Jr.
			Encalade, Anthony T.
			Encalade, Cary.
			Encalade, Joshua C.
			Encalade, Stanley A.
			Enclade, Joseph L.
			Enclade, Michael Sr and Jeannie Pitre.
			Enclade, Rodney J.
			Englade, Alfred.
			Ennis, A L Jr.
			Erickson, Grant G.
			Erlinger, Carroll.
			Erlinger, Gary R.
			Eschete, Keith A.
			Esfeller, Benny A.
			Eskine, Kenneth.
			Esponge, Ernest J.
			Estaves, David Sr.
			Estaves, Ricky Joseph.
			Estay, Allen J.
			Estay, Wayne.
			Esteves, Anthony E Jr.
			Estrada, Orestes.
			Evans, Emile J Jr.
			Evans, Kevin J.
			Evans, Lester.
			Evans, Lester J Jr.
			Evans, Tracey J Sr.
			Everson, George C.
			Eymard, Brian P Sr.
			Eymard, Jervis J and Carolyn B.
			Fabiano, Morris C.
			Fabra, Mark.
			Fabre, Alton Jr.
			Fabre, Ernest J.
			Fabre, Kelly V.
			Fabre, Peggy B.
			Fabre, Sharon.
			Fabre, Terry A.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Fabre, Wayne M.
			Falcon, Mitchell J.
			Falgout, Barney.
			Falgout, Jerry P.
			Falgout, Leroy J.
			Falgout, Timothy J.
			Fanguy, Barry G.
			Fanning, Paul Jr.
			Farris, Thomas J.
			Fasone, Christopher J.
			Fasone, William J.
			Faulk, Lester J.
			Favaloro, Thomas J.
			Favre, Michael Jr.
			Fazende, Jeffery.
			Fazende, Thomas.
			Fazende, Thomas G.
			Fazzio, Anthony.
			Fazzio, Douglas P.
			Fazzio, Maxine J.
			Fazzio, Steve.
			Felarise, EJ.
			Felarise, Wayne A Sr.
			Fernandez, John.
			Fernandez, Laudelino.
			Ferrara, Audrey B.
			Ficarino, Dominick Jr.
			Fields, Bryan.
			Fillinich, Anthony.
			Fillinich, Anthony Sr.
			Fillinich, Jack.
			Fincher, Penny.
			Fincher, William.
			Fisch, Burton E.
			Fisher, Kelly.
			Fisher, Kirk.
			Fisher, Kirk A.
			Fitch, Adam.
			Fitch, Clarence J Jr.
			Fitch, Hanson.
			Fitzgerald, Burnell.
			Fitzgerald, Kirk.
			Fitzgerald, Kirk D.
			Fitzgerald, Ricky J Jr.
			Fleming, John M.
			Fleming, Meigs F.
			Fleming, Mike.
			Flick, Dana.
			Flores, Helena D.
			Flores, Thomas.
			Flowers, Steve W.
			Flowers, Vincent F.
			Folse, David M.
			Folse, Heath.
			Folse, Mary L.
			Folse, Ronald B.
			Fonseca, Francis Sr.
			Fontaine, William S.
			Fontenot, Peggy D.
			Ford, Judy.
			Ford, Warren Wayne.
			Foreman, Ralph Jr.
			Foret, Alva J.
			Foret, Billy J.
			Foret, Brent J.
			Foret, Glenn.
			Foret, Houston.
			Foret, Jackie P.
			Foret, Kurt J Sr.
			Foret, Lovelace A Sr.
			Foret, Loveless A Jr.
			Foret, Mark M.
			Foret, Patricia C.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Forrest, David P.
			Forsyth, Hunter.
			Forsythe, John.
			Fortune, Michael A.
			France, George J.
			Francis, Albert.
			Franklin, James K.
			Frankovich, Anthony.
			Franks, Michael.
			Frauenberger, Richard Wayne.
			Frazier, David J.
			Frazier, David M.
			Frazier, James.
			Frazier, Michael.
			Frederick, Davis.
			Frederick, Johnnie and Jeannie.
			Fredrick, Michael.
			Freeman, Arthur D.
			Freeman, Darrel P Sr.
			Freeman, Kenneth F.
			Freeman, Larry Scott.
			Frelich, Charles P.
			Frelich, Floyd J.
			Frelich, Kent.
			Frerics, Doug.
			Frerks, Albert R Jr.
			Frickey, Darell.
			Frickey, Darren.
			Frickey, Dirk I.
			Frickey, Eric J.
			Frickey, Harry J Jr.
			Frickey, Jimmy.
			Frickey, Rickey J.
			Frickey, Westley J.
			Friloux, Brad.
			Frisella, Jeanette M.
			Frisella, Jerome A Jr.
			Frost, Michael R.
			Fruge, Wade P.
			Gadson, James.
			Gaines, Dwayne.
			Gala, Christine.
			Galjour, Jess J.
			Galjour, Reed.
			Gallardo, John W.
			Gallardo, Johnny M.
			Galliano, Anthony.
			Galliano, Horace J.
			Galliano, Joseph Sr.
			Galliano, Logan J.
			Galliano, Lynne L.
			Galliano, Moise Jr.
			Galloway, AT Jr.
			Galloway, Jimmy D.
			Galloway, Judy L.
			Galloway, Mark D.
			Galt, Giles F.
			Gambarella, Luvencie J.
			Ganoi, Kristine.
			Garcia, Ana Maria.
			Garcia, Anthony.
			Garcia, Edward.
			Garcia, Kenneth.
			Garner, Larry S.
			Gary, Dalton J.
			Gary, Ernest J.
			Gary, Leonce Jr.
			Garza, Andrew.
			Garza, Jose H.
			Gaskill, Elbert Clinton and Sandra.
			Gaspar, Timothy.
			Gaspard, Aaron and Hazel C .
			Gaspard, Dudley A Jr.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Gaspard, Leonard J.
			Gaspard, Michael A.
			Gaspard, Michael Sr.
			Gaspard, Murry.
			Gaspard, Murry A Jr.
			Gaspard, Murry Sr.
			Gaspard, Murvin.
			Gaspard, Ronald Sr.
			Gaspard, Ronald Wayne Jr.
			Gaubert, Elizabeth.
			Gaubert, Gregory M.
			Gaubert, Melvin.
			Gaudet, Allen J IV.
			Gaudet, Ricky Jr.
			Gauthier, Hewitt J Sr.
			Gautreaux, William A.
			Gay, Norman F.
			Gay, Robert G.
			Gazzier, Daryl G.
			Gazzier, Emanuel A.
			Gazzier, Wilfred E.
			Gegenheimer, William F.
			Geiling, James.
			Geisman, Tony.
			Gentry, Robert.
			Gentry, Samuel W Jr.
			George, James J Jr.
			Gerica, Clara.
			Gerica, Peter.
			Giambrone, Corey P.
			Gibson, Eddie E.
			Gibson, Joseph.
			Gibson, Ronald F.
			Gilden, Eddie Jr.
			Gilden, Eddie Sr.
			Gilden, Inez W.
			Gilden, Wayne.
			Gillikin, James D.
			Girard, Chad Paul.
			Giroir, Mark S.
			Gisclair, Anthony J.
			Gisclair, Anthony Joseph Sr.
			Gisclair, August.
			Gisclair, Dallas J Sr.
			Gisclair, Doyle A.
			Gisclair, Kip J.
			Gisclair, Ramona D.
			Gisclair, Wade.
			Gisclair, Walter.
			Glover, Charles D.
			Glynn, Larry.
			Goetz, George.
			Goings, Robert Eugene.
			Golden, George T.
			Golden, William L.
			Gollot, Brian.
			Gollot, Edgar R.
			Gonzales, Arnold Jr.
			Gonzales, Mrs Cyril E Jr.
			Gonzales, Rene R.
			Gonzales, Rudolph S Jr.
			Gonzales, Rudolph S Sr.
			Gonzales, Sylvia A.
			Gonzales, Tim J.
			Gonzalez, Jorge Jr.
			Gonzalez, Julio.
			Gordon, Donald E.
			Gordon, Patrick Alvin.
			Gore, Henry H.
			Gore, Isabel.
			Gore, Pam.
			Gore, Thomas L.
			Gore, Timothy Ansel.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Gottschalk, Gregory.
			Gourgues, Harold C Jr.
			Goutierrez, Tony C.
			Govea, Joaquin.
			Graham, Darrell.
			Graham, Steven H.
			Granger, Albert J Sr.
			Granich, James.
			Granier, Stephen J.
			Grass, Michael.
			Graves, Robert N Sr.
			Gray, Jeannette.
			Gray, Monroe.
			Gray, Shirley E.
			Gray, Wayne A Sr.
			Graybill, Ruston.
			Green, Craig X.
			Green, James W.
			Green, James W Jr.
			Green, Shaun.
			Greenlaw, W C Jr.
			Gregoire, Ernest L.
			Gregoire, Rita M.
			Gregory, Curtis B.
			Gregory, Mercedes E.
			Grice, Raymond L Jr.
			Griffin, Alden J Sr.
			Griffin, Craig.
			Griffin, David D.
			Griffin, Elvis Joseph Jr.
			Griffin, Faye.
			Griffin, Faye Ann.
			Griffin, Jimmie J.
			Griffin, Nolty J.
			Griffin, Rickey.
			Griffin, Sharon.
			Griffin, Timothy.
			Griffin, Troy D.
			Groff, Alfred A.
			Groff, John A.
			Groover, Hank.
			Gros, Brent J Sr.
			Gros, Craig J.
			Gros, Danny A.
			Gros, Gary Sr.
			Gros, Junius A Jr.
			Gros, Keven.
			Gros, Michael A.
			Gross, Homer.
			Grossie, Janet M.
			Grossie, Shane A.
			Grossie, Tate.
			Grow, Jimmie C.
			Guenther, John J.
			Guenther, Raphael.
			Guerra, Bruce.
			Guerra, Chad L.
			Guerra, Fabian C.
			Guerra, Guy A.
			Guerra, Jerry V Sr.
			Guerra, Kurt P Sr.
			Guerra, Ricky J Sr.
			Guerra, Robert.
			Guerra, Ryan.
			Guerra, Troy A.
			Guerra, William Jr.
			Guidroz, Warren J.
			Guidry, Alvin A.
			Guidry, Andy J.
			Guidry, Arthur.
			Guidry, Bud.
			Guidry, Calvin P.
			Guidry, Carl J.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Guidry, Charles J.
			Guidry, Chris J.
			Guidry, Clarence P.
			Guidry, Clark.
			Guidry, Clint.
			Guidry, Clinton P Jr.
			Guidry, Clyde A.
			Guidry, David.
			Guidry, Dobie.
			Guidry, Douglas J Sr.
			Guidry, Elgy III.
			Guidry, Elgy Jr.
			Guidry, Elwin A Jr.
			Guidry, Gerald A.
			Guidry, Gordon Jr.
			Guidry, Guillaume A.
			Guidry, Harold.
			Guidry, Jason.
			Guidry, Jessie J.
			Guidry, Jessie Joseph.
			Guidry, Jonathan B.
			Guidry, Joseph T Jr.
			Guidry, Keith M.
			Guidry, Kenneth J.
			Guidry, Kerry A.
			Guidry, Marco.
			Guidry, Maurin T and Tamika.
			Guidry, Michael J.
			Guidry, Nolan J Sr.
			Guidry, Randy Peter Sr.
			Guidry, Rhonda S.
			Guidry, Robert C.
			Guidry, Robert Joseph.
			Guidry, Robert Wayne.
			Guidry, Roger.
			Guidry, Ronald.
			Guidry, Roy Anthony.
			Guidry, Roy J.
			Guidry, Tammy.
			Guidry, Ted.
			Guidry, Thomas P.
			Guidry, Timothy.
			Guidry, Troy.
			Guidry, Troy.
			Guidry, Ulysses.
			Guidry, Vicki.
			Guidry, Wayne J.
			Guidry, Wyatt.
			Guidry, Yvonne.
			Guidry-Calva, Holly A.
			Guilbeaux, Donald J.
			Guilbeaux, Lou.
			Guillie, Shirley.
			Guillory, Horace H.
			Guillot, Benjamin J Jr.
			Guillot, Rickey A.
			Gulledge, Lee.
			Gutierrez, Anita.
			Guy, Jody.
			Guy, Kimothy Paul.
			Guy, Wilson.
			Ha, Cherie Lan.
			Ha, Co Dong.
			Ha, Lai Thuy Thi.
			Ha, Lyanna.
			Hadwall, John R.
			Hafford, Johnny.
			Hagan, Jules.
			Hagan, Marianna.
			Haiglea, Robbin Richard.
			Hales, William E.
			Halili, Rhonda L.
			Hall, Byron S.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Hall, Darrel T Sr.
			Hall, Lorrie A.
			Hammer, Michael P.
			Hammock, Julius Michael.
			Hancock, Jimmy L.
			Handlin, William Sr.
			Hang, Cam T.
			Hansen, Chris.
			Hansen, Eric P.
			Hanson, Edmond A.
			Harbison, Louis.
			Hardee, William P.
			Hardison, Louis.
			Hardy John C.
			Hardy, Sharon.
			Harmon, Michelle.
			Harrington, George J.
			Harrington, Jay.
			Harris, Bobby D.
			Harris, Buster.
			Harris, Jimmy Wayne Sr.
			Harris, Johnny Ray.
			Harris, Kenneth A.
			Harris, Ronnie.
			Harris, Susan D.
			Harris, William.
			Harrison, Daniel L.
			Hartmann, Leon M Jr.
			Hartmann, Walter Jr.
			Hattaway, Errol Henry.
			Haycock, Kenneth.
			Haydel, Gregory.
			Hayes, Clinton.
			Hayes, Katherine F.
			Hayes, Lod Jr.
			Hean, Hong.
			Heathcock, Walter Jr.
			Hebert, Albert Joseph.
			Hebert, Bernie.
			Hebert, Betty Jo.
			Hebert, Chris.
			Hebert, Craig J.
			Hebert, David.
			Hebert, David Jr.
			Hebert, Earl J.
			Hebert, Eric J.
			Hebert, Jack M.
			Hebert, Johnny Paul.
			Hebert, Jonathan.
			Hebert, Jules J.
			Hebert, Kim M.
			Hebert, Lloyd S III.
			Hebert, Michael J.
			Hebert, Myron A.
			Hebert, Norman.
			Hebert, Patrick.
			Hebert, Patrick A.
			Hebert, Pennington Jr.
			Hebert, Philip.
			Hebert, Robert A.
			Hebert, Terry W.
			Hedrick, Gerald J Jr.
			Helmer, Claudia A.
			Helmer, Gerry J.
			Helmer, Herman C Jr.
			Helmer, Kenneth.
			Helmer, Larry J Sr.
			Helmer, Michael A Sr.
			Helmer, Rusty L.
			Helmer, Windy.
			Hemmenway, Jack.
			Henderson, Brad.
			Henderson, Curtis.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Henderson, David A Jr.
			Henderson, David A Sr.
			Henderson, Johnny.
			Henderson, Olen.
			Henderson, P Loam.
			Henry, Joanne.
			Henry, Rodney.
			Herbert, Patrick and Terry.
			Hereford, Rodney O Jr.
			Hereford, Rodney O Sr.
			Hernandez, Corey.
			Herndon, Mark.
			Hertel, Charles W.
			Hertz, Edward C Sr.
			Hess, Allen L Sr.
			Hess, Henry D Jr.
			Hess, Jessica R.
			Hess, Wayne B.
			Hewett, Emma.
			Hewett, James.
			Hickman, John.
			Hickman, Marvin.
			Hicks, Billy M.
			Hicks, James W.
			Hicks, Larry W.
			Hicks, Walter R.
			Hien, Nguyen.
			Higgins, Joseph J III.
			Hill, Darren S.
			Hill, Joseph R.
			Hill, Sharon.
			Hill, Willie E Jr.
			Hills, Herman W.
			Hingle, Barbara E.
			Hingle, Rick A.
			Hingle, Roland T Jr.
			Hingle, Roland T Sr.
			Hingle, Ronald J.
			Hinojosa, R.
			Hinojosa, Randy.
			Hinojosa, Ricky A.
			Hipps, Nicole Marie.
			Ho, Dung Tan.
			Ho, Hung.
			Ho, Jennifer.
			Ho, Jimmy.
			Ho, Lam.
			Ho, Nam.
			Ho, Nga T.
			Ho, O.
			Ho, Sang N.
			Ho, Thanh Quoc.
			Ho, Thien Dang.
			Ho, Tien Van.
			Ho, Tri Tran.
			Hoang, Dung T.
			Hoang, Hoa T and Tam Hoang.
			Hoang, Huy Van.
			Hoang, Jennifer Vu.
			Hoang, John.
			Hoang, Julie.
			Hoang, Kimberly.
			Hoang, Linda.
			Hoang, Loan.
			Hoang, San Ngoc.
			Hoang, Tro Van.
			Hoang, Trung Kim.
			Hoang, Trung Tuan.
			Hoang, Vincent Huynh.
			Hodges, Ralph W.
			Hoffpaviiz, Harry K.
			Holland, Vidal.
			Holler, Boyce Dwight Jr.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Hollier, Dennis J.
			Holloway, Carl D.
			Hong, Tai Van.
			Hood, Malcolm.
			Hopton, Douglas.
			Horaist, Shawn P.
			Hostetler, Warren L II.
			Hotard, Claude.
			Hotard, Emile J Jr.
			Howard, Jeff.
			Howerin, Billy Sr.
			Howerin, Wendell Sr.
			Hubbard, Keith.
			Hubbard, Perry III.
			Huber, Berry T.
			Huber, Charles A.
			Huck, Irma Elaine.
			Huck, Steven R.
			Huckabee, Harold.
			Hue, Patrick A.
			Hughes, Brad J.
			Hults, Thomas.
			Hutcherson, Daniel J.
			Hutchinson, Douglas.
			Hutchinson, George D.
			Hutchinson, William H.
			Hutto, Cynthia E.
			Hutto, Henry G Jr.
			Huynh, Chien Thi.
			Huynh, Dong Xuan.
			Huynh, Dung.
			Huynh, Dung V.
			Huynh, Hai.
			Huynh, Hai.
			Huynh, Hai Van.
			Huynh, Hoang D.
			Huynh, Hoang Van.
			Huynh, Hung.
			Huynh, James N.
			Huynh, Johhny Hiep.
			Huynh, Johnnie.
			Huynh, Kim.
			Huynh, Lay.
			Huynh, Long.
			Huynh, Mack Van.
			Huynh, Mau Van.
			Huynh, Minh.
			Huynh, Minh Van.
			Huynh, Nam Van.
			Huynh, Thai.
			Huynh, Tham Thi.
			Huynh, Thanh.
			Huynh, The V.
			Huynh, Tri.
			Huynh, Truc.
			Huynh, Tu.
			Huynh, Tu.
			Huynh, Tung Van.
			Huynh, Van X.
			Huynh, Viet Van.
			Huynh, Vuong Van.
			Hymel, Joseph Jr.
			Hymel, Michael D.
			Hymel, Nolan J Sr.
			Ingham, Herbert W.
			Inglis, Richard M.
			Ingraham, Joseph S.
			Ingraham, Joyce.
			Ipock, Billy.
			Ipock, William B.
			Ireland, Arthur Allen.
			Iver, George Jr.
			Jackson, Alfred M.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Jackson, Carl John.
			Jackson, David.
			Jackson, Eugene O.
			Jackson, Glenn C Jr.
			Jackson, Glenn C Sr.
			Jackson, James Jerome.
			Jackson, John D.
			Jackson, John Elton Sr.
			Jackson, Levi.
			Jackson, Nancy L.
			Jackson, Robert W.
			Jackson, Shannon.
			Jackson, Shaun C.
			Jackson, Steven A.
			Jacob, Ronald R.
			Jacob, Warren J Jr.
			Jacobs, L Anthony.
			Jacobs, Lawrence F.
			Jarreau, Billy and Marilyn.
			Jarvis, James D.
			Jaye, Emma.
			Jeanfreau, Vincent R.
			Jefferies, William.
			Jemison, Timothy Michael Sr.
			Jennings, Jacob.
			Joffrion, Harold J Jr.
			Johnson, Albert F.
			Johnson, Ashley Lamar.
			Johnson, Bernard Jr.
			Johnson, Brent W.
			Johnson, Bruce Warem.
			Johnson, Carl S.
			Johnson, Carolyn.
			Johnson, Clyde Sr.
			Johnson, David G.
			Johnson, David Paul.
			Johnson, Gary Allen Sr.
			Johnson, George D.
			Johnson, Michael A.
			Johnson, Randy J.
			Johnson, Regenia.
			Johnson, Robert.
			Johnson, Ronald Ray Sr.
			Johnson, Steve.
			Johnson, Thomas Allen Jr.
			Johnston, Ronald.
			Joly, Nicholas J Jr.
			Jones, Charles.
			Jones, Clinton.
			Jones, Daisy Mae.
			Jones, Jeffery E.
			Jones, Jerome N Sr.
			Jones, John W.
			Jones, Larry.
			Jones, Len.
			Jones, Michael G Sr.
			Jones, Paul E.
			Jones, Perry T Sr.
			Jones, Ralph William.
			Jones, Richard G Sr.
			Jones, Stephen K.
			Jones, Wayne.
			Joost, Donald F.
			Jordan, Dean.
			Jordan, Hubert William III (Bert).
			Jordan, Hurbert W Jr.
			Judalet, Ramon G.
			Judy, William Roger.
			Julian, Ida.
			Julian, John I Sr.
			Juneau, Anthony Sr.
			Juneau, Bruce.
			Juneau, Robert A Jr and Laura K.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Jurjevich, Leander J.
			Kain, Jules B Sr.
			Kain, Martin A.
			Kalliainen, Dale.
			Kalliainen, Richard.
			Kang, Chamroeun.
			Kang, Sambo.
			Kap, Brenda.
			Keen, Robert Steven.
			Keenan, Robert M.
			Kellum, Kenneth Sr.
			Kellum, Larry Gray Sr.
			Kellum, Roxanne.
			Kelly, Roger B.
			Kelly, Thomas E.
			Kendrick, Chuck J.
			Kennair, Michael S.
			Kennedy, Dothan.
			Kenney, David Jr.
			Kenney, Robert W.
			Kent, Michael A.
			Keo, Bunly.
			Kerchner, Steve.
			Kern, Thurmond.
			Khin, Sochenda.
			Khui, Lep and Nga Ho.
			Kidd, Frank.
			Kiesel, Edward C and Lorraine T.
			Kiff, Hank J.
			Kiff, Melvin.
			Kiffe, Horace.
			Kim, Puch.
			Kimbrough, Carson.
			Kim-Tun, Soeun.
			King, Andy A.
			King, Donald Jr.
			King, James B.
			King, Thornell.
			King, Wesley.
			Kit, An.
			Kizer, Anthony J.
			Kleimann, Robert.
			Knapp, Alton P Jr.
			Knapp, Alton P Sr.
			Knapp, Ellis L Jr.
			Knapp, Melvin L.
			Knapp, Theresa.
			Knecht, Frederick Jr.
			Knezek, Lee.
			Knight, George.
			Knight, Keith B.
			Knight, Robert E.
			Koch, Howard J.
			Kong, Seng.
			Konitz, Bobby.
			Koo, Herman.
			Koonce, Curtis S.
			Koonce, Howard N.
			Kopszywa, Mark L.
			Kopszywa, Stanley J.
			Kotulja, Stejepan.
			Kraemer, Bridget.
			Kraemer, Wilbert J.
			Kraemer, Wilbert Jr.
			Kramer, David.
			Krantz, Arthur Jr.
			Krantz, Lori.
			Kraver, C W.
			Kreger, Ronald A Sr.
			Kreger, Roy J Sr.
			Kreger, Ryan A.
			Krennerich, Raymond A.
			Kroke, Stephen E.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Kruth, Frank D. Kuchler, Alphonse L III. Kuhn, Bruce A Sr. Kuhn, Gerard R Jr. Kuhn, Gerard R Sr. Kuhns, Deborah. LaBauve, Kerry. LaBauve, Sabrina. LaBauve, Terry. LaBiche, Todd A. LaBove, Carroll. LaBove, Frederick P. Lachica, Jacqueline. Lachico, Douglas. Lacobon, Tommy W Jr. Lacobon, Tony C. LaCoste, Broddie. LaCoste, Carl. LaCoste, Dennis E. LaCoste, Grayland J. LaCoste, Malcolm Jr. LaCoste, Melvin. LaCoste, Melvin W Jr. LaCoste, Ravin J Jr. LaCoste, Ravin Sr. Ladner, Clarence J III. Ladson, Earlene G. LaFont, Douglas A Sr. LaFont, Edna S. LaFont, Jackin. LaFont, Noces J Jr. LaFont, Weyland J Sr. LaFrance, Joseph T. Lagarde, Frank N. Lagarde, Gary Paul. Lagasse, Michael F. Lai, Hen K. Lai, Then. Lam, Cang Van. Lam, Cui. Lam, Dong Van. Lam, Hiep Tan. Lam, Lan Van. Lam, Lee Phenh. Lam, Phan. Lam, Qui. Lam, Sochen. Lam, Tai. Lam, Tinh Huu. Lambas, Jessie J Sr. Lanclos, Paul. Landry, David A. Landry, Dennis J. Landry, Edward N Jr. Landry, George. Landry, George M. Landry, James F. Landry, Jude C. Landry, Robert E. Landry, Ronald J. Landry, Samuel J Jr. Landry, Tracy. Lane, Daniel E. Lapeyrouse, Lance M. Lapeyrouse, Rosalie. Lapeyrouse, Tillman Joseph. LaRive, James L Jr. LaRoche, Daniel S. Lasseigne, Betty. Lasseigne, Blake. Lasseigne, Floyd. Lasseigne, Frank. Lasseigne, Harris Jr.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Lasseigne, Ivy Jr.
			Lasseigne, Jefferson.
			Lasseigne, Jefferson P Jr.
			Lasseigne, Johnny J.
			Lasseigne, Marlene.
			Lasseigne, Nolan J.
			Lasseigne, Trent.
			Lat, Chhiet.
			Latapie, Charlotte A.
			Latapie, Crystal.
			Latapie, Jerry.
			Latapie, Joey G.
			Latapie, Joseph.
			Latapie, Joseph F Sr.
			Latapie, Travis.
			Latiolais, Craig J.
			Latiolais, Joel.
			Lau, Ho Thanh.
			Laughlin, James G.
			Laughlin, James Mitchell.
			Laurent, Yvonne M.
			Lavergne, Roger.
			Lawdros, Terrance Jr.
			Layrisson, Michael A III.
			Le, Amanda.
			Le, An Van.
			Le, Ben.
			Le, Binh T.
			Le, Cheo Van.
			Le, Chinh Thanh.
			Le, Chinh Thanh and Yen Vo.
			Le, Cu Thi.
			Le, Dai M.
			Le, Dale.
			Le, David Rung.
			Le, Du M.
			Le, Duc V.
			Le, Duoc M.
			Le, Hien V.
			Le, Houston T.
			Le, Hung.
			Le, Jimmy.
			Le, Jimmy and Hoang.
			Le, Khoa.
			Le, Kim.
			Le, Ky Van.
			Le, Lang Van.
			Le, Lily.
			Le, Lisa Tuyet Thi.
			Le, Loi.
			Le, Minh Van.
			Le, Muoi Van.
			Le, My.
			Le, My V.
			Le, Nam and Xhan-Minh Le.
			Le, Nam Van.
			Le, Nhieu T.
			Le, Nhut Hoang.
			Le, Nu Thi.
			Le, Phuc Van.
			Le, Que V.
			Le, Quy.
			Le, Robert.
			Le, Sam Van.
			Le, Sau V.
			Le, Son.
			Le, Son.
			Le, Son H.
			Le, Son Quoc.
			Le, Son Van.
			Le, Su.
			Le, Tam V.
			Le, Thanh Huong.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Le, Tong Minh.
			Le, Tony.
			Le, Tracy Lan Chi.
			Le, Tuan Nhu.
			Le, Viet Hoang.
			Le, Vui.
			Leaf, Andrew Scott.
			Leary, Roland.
			LeBeauf, Thomas.
			LeBlanc, Donnie.
			LeBlanc, Edwin J.
			LeBlanc, Enoch P.
			LeBlanc, Gareth R III.
			LeBlanc, Gareth R Jr.
			LeBlanc, Gerald E.
			LeBlanc, Hubert C.
			LeBlanc, Jerald.
			LeBlanc, Jesse Jr.
			LeBlanc, Keenon Anthony.
			LeBlanc, Lanvin J.
			LeBlanc, Luke A.
			LeBlanc, Marty J.
			LeBlanc, Marty J Jr.
			LeBlanc, Mickel J.
			LeBlanc, Robert Patrick.
			LeBlanc, Scotty M.
			LeBlanc, Shelton.
			LeBlanc, Terry J.
			LeBoeuf, Brent J.
			LeBoeuf, Emery J.
			LeBoeuf, Joseph R.
			LeBoeuf, Tammy Y.
			LeBouef, Dale.
			LeBouef, Edward J.
			LeBouef, Ellis J Jr.
			LeBouef, Gillis.
			LeBouef, Jimmie.
			LeBouef, Leslie.
			LeBouef, Lindy J.
			LeBouef, Micheal J.
			LeBouef, Raymond.
			LeBouef, Tommy J.
			LeBouef, Wiley Sr.
			LeBourgeois, Stephen A.
			LeCompte, Alena.
			LeCompte, Aubrey J.
			LeCompte, Etha.
			LeCompte, Jesse C Jr.
			LeCompte, Jesse Jr.
			LeCompte, Jesse Sr.
			LeCompte, Lyle.
			LeCompte, Patricia F.
			LeCompte, Todd.
			LeCompte, Troy A Sr.
			Ledet, Brad.
			Ledet, Bryan.
			Ledet, Carlton.
			Ledet, Charles J.
			Ledet, Jack A.
			Ledet, Kenneth A.
			Ledet, Mark.
			Ledet, Maxine B.
			Ledet, Mervin.
			Ledet, Phillip John.
			Ledoux, Dennis.
			Ledwig, Joe J.
			Lee, Carl.
			Lee, James K.
			Lee, Marilyn.
			Lee, Otis M Jr.
			Lee, Raymond C.
			Lee, Robert E.
			Lee, Steven J.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Leek, Mark A.
			LeGaux, Roy J Jr.
			Legendre, Kerry.
			Legendre, Paul.
			Leger, Andre.
			LeGros, Alex M.
			LeJeune, Philip Jr.
			LeJeune, Philip Sr.
			LeJeune, Ramona V.
			LeJeunee, Debbie.
			LeJuine, Eddie R.
			LeLand, Allston Bochet.
			Leland, Rutledge B III.
			Leland, Rutledge B Jr.
			LeLeaux, David.
			Leleux, Kevin J.
			Lemoine, Jeffery Jr.
			Leonard, Dan.
			Leonard, Dexter J Jr.
			Leonard, Micheal A.
			Lepine, Leroy L.
			Lesso, Rudy Jr.
			Lester, Shawn.
			Levron, Dale T.
			Levy, Patrick T.
			Lewis, Kenneth.
			Lewis, Mark Steven.
			Libersat, Anthony R.
			Libersat, Kim.
			Licatino, Daniel Jr.
			Lichenstein, Donald L.
			Lilley, Douglas P.
			Lim, Chhay.
			Lim, Koung.
			Lim, Tav Seng.
			Linden, Eric L.
			Liner, Claude J Jr.
			Liner, Harold.
			Liner, Jerry.
			Liner, Kevin.
			Liner, Michael B Sr.
			Liner, Morris T Jr.
			Liner, Morris T Sr.
			Liner, Tandy M.
			Linh, Pham.
			Linwood, Dolby.
			Lirette, Alex J Sr.
			Lirette, Bobby and Sheri.
			Lirette, Chester Patrick.
			Lirette, Daniel J.
			Lirette, Dean J.
			Lirette, Delvin J Jr.
			Lirette, Delvin Jr.
			Lirette, Desaire J.
			Lirette, Eugis P Sr.
			Lirette, Guy A.
			Lirette, Jeannie.
			Lirette, Kern A.
			Lirette, Ron C.
			Lirette, Russell (Chico) Jr.
			Lirette, Shaun Patrick.
			Lirette, Terry J Sr.
			Little, William A.
			Little, William Boyd.
			Liv, Niem S.
			Livaudais, Ernest J.
			Liverman, Harry R.
			LoBue, Michael Anthony Sr.
			Locascio, Dustin.
			Lockhart, William T.
			Lodrigue, Jimmy A.
			Lodrigue, Kerry.
			Lombardo, Joseph P.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Lombas, James A Jr.
			Lombas, Kim D.
			Londrie, Harley.
			Long, Cao Thanh.
			Long, Dinh.
			Long, Robert.
			Longo, Ronald S Jr.
			Longwater, Ryan Heath.
			Loomer, Rhonda.
			Lopez, Celestino.
			Lopez, Evelio.
			Lopez, Harry N.
			Lopez, Ron.
			Lopez, Scott.
			Lopez, Stephen R Jr.
			Lord, Michael E Sr.
			Loupe, George Jr.
			Loupe, Ted.
			Lovell, Billy.
			Lovell, Bobby Jason.
			Lovell, Bradford John.
			Lovell, Charles J Jr.
			Lovell, Clayton.
			Lovell, Douglas P.
			Lovell, Jacob G.
			Lovell, Lois.
			Lovell, Slade M.
			Luke, Bernadette C.
			Luke, David.
			Luke, Dustan.
			Luke, Henry.
			Luke, Jeremy Paul.
			Luke, Keith J.
			Luke, Patrick A.
			Luke, Patrick J.
			Luke, Paul Leroy.
			Luke, Rudolph J.
			Luke, Samantha.
			Luke, Sidney Jr.
			Luke, Terry Patrick Jr.
			Luke, Terry Patrick Sr.
			Luke, Timothy.
			Luke, Wiltz J.
			Lund, Ora G.
			Luneau, Ferrell J.
			Luong, Kevin.
			Luong, Thu X.
			Luscy, Lydia.
			Luscy, Richard.
			Lutz, William A.
			Luu, Binh.
			Luu, Vinh.
			Luu, Vinh V.
			Ly, Bui.
			Ly, Hen.
			Ly, Hoc.
			Ly, Kelly D.
			Ly, Nu.
			Ly, Sa.
			Ly, Ven.
			Lyall, Rosalie.
			Lycett, James A.
			Lyons, Berton J.
			Lyons, Berton J Sr.
			Lyons, Jack.
			Lyons, Jerome M.
			Mackey, Marvin Sr.
			Mackie, Kevin L.
			Maggio, Wayne A.
			Magwood, Edwin Wayne.
			Mai, Danny V.
			Mai, Lang V.
			Mai, Tai.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Mai, Trach Xuan.
			Maise, Rubin J.
			Maise, Todd.
			Majoue, Ernest J.
			Majoue, Nathan L.
			Malcombe, David.
			Mallett, Irvin Ray.
			Mallett, Jimmie.
			Mallett, Lawrence J.
			Mallett, Mervin B.
			Mallett, Rainbow.
			Mallett, Stephney.
			Malley, Ned F Jr.
			Mamolo, Charles H Sr.
			Mamolo, Romeo C Jr.
			Mamolo, Terry A.
			Mancera, Jesus.
			Manuel, Joseph R.
			Manuel, Shon.
			Mao, Chandarasy.
			Mao, Kim.
			Marcel, Michelle.
			Marchese, Joe Jr.
			Mareno, Ansley.
			Mareno, Brent J.
			Mareno, Kenneth L.
			Marie, Allen J.
			Marie, Marty.
			Marmande, Al.
			Marmande, Alidore.
			Marmande, Denise.
			Marquize, Heather.
			Marquize, Kip.
			Marris, Roy C Jr.
			Martin, Darren.
			Martin, Dean J.
			Martin, Dennis.
			Martin, Jody W.
			Martin, John F III.
			Martin, Michael A.
			Martin, Nora S.
			Martin, Rod J.
			Martin, Roland J Jr.
			Martin, Russel J Sr.
			Martin, Sharon J.
			Martin, Tanna G.
			Martin, Wendy.
			Martinez, Carl R.
			Martinez, Henry.
			Martinez, Henry Joseph.
			Martinez, Lupe.
			Martinez, Michael.
			Martinez, Rene J.
			Mason, James F Jr.
			Mason, Johnnie W.
			Mason, Luther.
			Mason, Mary Lois.
			Mason, Percy D Jr.
			Mason, Walter.
			Matherne, Anthony.
			Matherne, Blakland Sr.
			Matherne, Bradley J.
			Matherne, Claude I Jr.
			Matherne, Clifford P.
			Matherne, Curlis J.
			Matherne, Forest J.
			Matherne, George J.
			Matherne, Glenn A.
			Matherne, Grace L.
			Matherne, James C.
			Matherne, James J Jr.
			Matherne, James J Sr.
			Matherne, Joey A.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Matherne, Keith.
			Matherne, Larry Jr.
			Matherne, Louis M Sr.
			Matherne, Louis Michael.
			Matherne, Nelson.
			Matherne, Thomas G.
			Matherne, Thomas G Jr.
			Matherne, Thomas Jr.
			Matherne, Thomas M Sr.
			Matherne, Wesley J.
			Mathews, Patrick.
			Mathurne, Barry.
			Matte, Martin J Sr.
			Mauldin, Johnny.
			Mauldin, Mary.
			Mauldin, Shannon.
			Mavar, Mark D.
			Mayeux, Lonies A Jr.
			Mayeux, Roselyn P.
			Mayfield, Gary.
			Mayfield, Henry A Jr.
			Mayfield, James J III.
			Mayon, Allen J.
			Mayon, Wayne Sr.
			McAnespy, Henry.
			McAnespy, Louis.
			McCall, Marcus H.
			McCall, R Terry Sr.
			McCarthy, Carliss.
			McCarthy, Michael.
			McCauley, Byron Keith.
			McCauley, Katrina.
			McClantoc, Robert R and Debra.
			McClellan, Eugene Gardner.
			McCormick, Len.
			McCuiston, Denny Carlton.
			McDonald, Allan.
			McElroy, Harry J.
			McFarlain, Merlin J Jr.
			McGuinn, Dennis.
			McIntosh, James Richard.
			McIntyre, Michael D.
			McIver, John H Jr.
			McKendree, Roy.
			McKenzie, George B.
			McKinzie, Bobby E.
			McKoin, Robert.
			McKoin, Robert F Jr.
			McLendon, Jonathon S.
			McNab, Robert Jr.
			McQuaig, Don W.
			McQuaig, Oliver J.
			Medine, David P.
			Mehaffey, John P.
			Melancon, Brent K.
			Melancon, Neva.
			Melancon, Rickey.
			Melancon, Roland Jr.
			Melancon, Roland T Jr.
			Melancon, Sean P.
			Melancon, Terral J.
			Melancon, Timmy J.
			Melanson, Ozimea J III.
			Melerine, Angela.
			Melerine, Brandon T.
			Melerine, Claude A.
			Melerine, Claude A Jr.
			Melerine, Dean J.
			Melerine, Eric W Jr.
			Melerine, John D Sr.
			Melerine, Linda C.
			Melerine, Raymond Joseph.
			Melford, Daniel W Sr.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Mello, Nelvin.
			Men, Sophin.
			Menendez, Wade E.
			Menesses, Dennis.
			Menesses, James H.
			Menesses, Jimmy.
			Menesses, Louis.
			Menge, Lionel A.
			Menge, Vincent J.
			Mercy, Dempsey.
			Merrick, Harold A.
			Merrick, Kevin Sr.
			Merritt, Darren Sr.
			Messer, Chase.
			Meyers, Otis J.
			Miarm, Soeum.
			Michel, Steven D.
			Middleton, Dan Sr.
			Migues, Henry.
			Migues, Kevin L Sr.
			Milam, Ricky.
			Miles, Ricky David.
			Miley, Donna J.
			Militello, Joseph.
			Miller, David W.
			Miller, Fletcher N.
			Miller, James A.
			Miller, Larry B.
			Miller, Mabry Allen Jr.
			Miller, Michael E.
			Miller, Michele K.
			Miller, Randy A.
			Miller, Rhonda E.
			Miller, Wayne.
			Millet, Leon B.
			Millington, Donnie.
			Millington, Ronnie.
			Millis, Moses.
			Millis, Raeford.
			Millis, Timmie Lee.
			Mine, Derrick.
			Miner, Peter G.
			Minh, Kha.
			Minh, Phuc-Truong.
			Mitchell, Ricky Allen.
			Mitchell, Todd.
			Mitchum, Francis Craig.
			Mixon, G C.
			Mobley, Bryan A.
			Mobley, Jimmy Sr.
			Mobley, Robertson.
			Mock, Frank Sr.
			Mock, Frankie E Jr.
			Mock, Jesse R II.
			Mock, Terry Lyn.
			Molero, Louis F III.
			Molero, Louis Frank.
			Molinere, Al L.
			Molinere, Floyd.
			Molinere, Roland Jr.
			Molinere, Stacey.
			Moll, Angela.
			Moll, Jerry J Jr.
			Moll, Jonathan P.
			Moll, Julius J.
			Moll, Randall Jr.
			Mollere, Randall.
			Mones, Philip J Jr.
			Mones, Tino.
			Moody, Guy D.
			Moore, Carl Stephen.
			Moore, Curtis L.
			Moore, Kenneth.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Moore, Richard.
			Moore, Willis.
			Morales, Anthony.
			Morales, Clinton A.
			Morales, Daniel Jr.
			Morales, Daniel Sr.
			Morales, David.
			Morales, Elwood J Jr.
			Morales, Eugene J Jr.
			Morales, Eugene J Sr.
			Morales, Kimberly.
			Morales, Leonard L.
			Morales, Phil J Jr.
			Morales, Raul.
			Moran, Scott.
			Moreau, Allen Joseph.
			Moreau, Berlin J Sr.
			Moreau, Daniel R.
			Moreau, Hubert J.
			Moreau, Mary.
			Moreau, Rickey J Sr.
			Morehead, Arthur B Jr.
			Moreno, Ansley.
			Morgan, Harold R.
			Morici, John.
			Morris, Herbert Eugene.
			Morris, Jesse A.
			Morris, Jesse A Sr.
			Morris, Preston.
			Morrison, Stephen D Jr.
			Morton, Robert A.
			Morvant, Keith M.
			Morvant, Patsy Lishman.
			Moschettieri, Chalam.
			Moseley, Kevin R.
			Motley, Michele.
			Mouille, William L.
			Mouton, Ashton J.
			Moveront, Timothy.
			Mund, Mark.
			Murphy, Denis R.
			Muth, Gary J Sr.
			Myers, Joseph E Jr.
			Na, Tran Van.
			Naccio, Andrew.
			Nacio, Lance M.
			Nacio, Noel.
			Nacio, Philocles J Sr.
			Naquin, Alton J.
			Naquin, Andrew J Sr.
			Naquin, Antoine Jr.
			Naquin, Autry James.
			Naquin, Bobby J and Sheila.
			Naquin, Bobby Jr.
			Naquin, Christine.
			Naquin, Dean J.
			Naquin, Donna P.
			Naquin, Earl.
			Naquin, Earl L.
			Naquin, Freddie.
			Naquin, Gerald.
			Naquin, Henry.
			Naquin, Irvin J.
			Naquin, Jerry Joseph Jr.
			Naquin, Kenneth J Jr.
			Naquin, Kenneth J Sr.
			Naquin, Linda L.
			Naquin, Lionel A Jr.
			Naquin, Mark D Jr.
			Naquin, Marty J Sr.
			Naquin, Milton H IV.
			Naquin, Oliver A.
			Naquin, Robert.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Naquin, Roy A. Naquin, Vernon. Navarre, Curtis J. Navero, Floyd G Jr. Neal, Craig A. Neal, Roy J Jr. Neely, Bobby H. Nehlig, Raymond E Sr. Neil, Dean. Neil, Jacob. Neil, Julius. Neil, Robert J Jr. Neil, Tommy Sr. Nelson, Billy J Sr. Nelson, Deborah. Nelson, Elisha W. Nelson, Ernest R. Nelson, Faye. Nelson, Fred H Sr. Nelson, Gordon Kent Sr. Nelson, Gordon W III. Nelson, Gordon W Jr. Nelson, John Andrew. Nelson, William Owen Jr. Nelton, Aaron J Jr. Nelton, Steven J. Nettleton, Cody. Newell, Ronald B. Newsome, Thomas E. Newton, Paul J. Nghiem, Billy. Ngo, Chuong Van. Ngo, Duc. Ngo, Hung V. Ngo, Liem Thanh. Ngo, Maxie. Ngo, The T. Ngo, Truong Dinh. Ngo, Van Lo. Ngo, Vu Hoang. Ngoc, Lam Lam. Ngu,Thoi. Nguyen, Amy. Nguyen, An Hoang. Nguyen, Andy Dung. Nguyen, Andy T. Nguyen, Anh and Thanh D Tiet. Nguyen, Ba. Nguyen, Ba Van. Nguyen, Bac Van. Nguyen, Bao Q. Nguyen, Bay Van. Nguyen, Be. Nguyen, Be. Nguyen, Be. Nguyen, Be Em. Nguyen, Bich Thao. Nguyen, Bien V. Nguyen, Binh. Nguyen, Binh Cong. Nguyen, Binh V. Nguyen, Binh Van. Nguyen, Binh Van. Nguyen, Binh Van. Nguyen, Bui Van. Nguyen, Ca Em. Nguyen, Can. Nguyen, Can Van. Nguyen, Canh V. Nguyen, Charlie. Nguyen, Chien. Nguyen, Chien Van. Nguyen, Chin.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Nguyen, Chinh Van.
			Nguyen, Christian.
			Nguyen, Chuc.
			Nguyen, Chung.
			Nguyen, Chung Van.
			Nguyen, Chuong Hoang.
			Nguyen, Chuong V.
			Nguyen, Chuyen.
			Nguyen, Coolly Dinh.
			Nguyen, Cuong.
			Nguyen, Dai.
			Nguyen, Dan T.
			Nguyen, Dan Van.
			Nguyen, Dan Van.
			Nguyen, Dang.
			Nguyen, Danny.
			Nguyen, David.
			Nguyen, Day Van.
			Nguyen, De Van.
			Nguyen, Den.
			Nguyen, Diem.
			Nguyen, Dien.
			Nguyen, Diep.
			Nguyen, Dinh.
			Nguyen, Dinh V.
			Nguyen, Dong T.
			Nguyen, Dong Thi.
			Nguyen, Dong X.
			Nguyen, Duc.
			Nguyen, Duc Van.
			Nguyen, Dung.
			Nguyen, Dung Anh and Xuan Duong.
			Nguyen, Dung Ngoc.
			Nguyen, Dung Van.
			Nguyen, Dung Van.
			Nguyen, Duoc.
			Nguyen, Duong V.
			Nguyen, Duong Van.
			Nguyen, Duong Xuan.
			Nguyen, Francis N.
			Nguyen, Frank.
			Nguyen, Gary.
			Nguyen, Giang T.
			Nguyen, Giang Truong.
			Nguyen, Giau Van.
			Nguyen, Ha T.
			Nguyen, Ha Van.
			Nguyen, Hai Van.
			Nguyen, Hai Van.
			Nguyen, Han Van.
			Nguyen, Han Van.
			Nguyen, Hang.
			Nguyen, Hanh T.
			Nguyen, Hao Van.
			Nguyen, Harry H.
			Nguyen, Henri Hiep.
			Nguyen, Henry-Trang.
			Nguyen, Hien.
			Nguyen, Hien V.
			Nguyen, Hiep.
			Nguyen, Ho.
			Nguyen, Ho V.
			Nguyen, Hoa.
			Nguyen, Hoa.
			Nguyen, Hoa N.
			Nguyen, Hoa Van.
			Nguyen, Hoang.
			Nguyen, Hoang.
			Nguyen, Hoang T.
			Nguyen, Hoi.
			Nguyen, Hon Xuong.
			Nguyen, Huan.
			Nguyen, Hung.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Nguyen, Hung.
			Nguyen, Hung.
			Nguyen, Hung M.
			Nguyen, Hung Manh.
			Nguyen, Hung Van.
			Nguyen, Hung-Joseph.
			Nguyen, Huu Nghia.
			Nguyen, Hy Don N.
			Nguyen, Jackie Tin.
			Nguyen, James.
			Nguyen, James N.
			Nguyen, Jefferson.
			Nguyen, Jennifer.
			Nguyen, Jimmy.
			Nguyen, Jimmy.
			Nguyen, Joachim.
			Nguyen, Joe.
			Nguyen, John R.
			Nguyen, John Van.
			Nguyen, Johnny.
			Nguyen, Joseph Minh.
			Nguyen, Kenny Hung Mong.
			Nguyen, Kevin.
			Nguyen, Khai.
			Nguyen, Khanh.
			Nguyen, Khanh and Viet Dinh.
			Nguyen, Khanh Q.
			Nguyen, Khiem.
			Nguyen, Kien Phan.
			Nguyen, Kim.
			Nguyen, Kim Mai.
			Nguyen, Kim Thoa.
			Nguyen, Kinh V.
			Nguyen, Lai.
			Nguyen, Lai.
			Nguyen, Lai Tan.
			Nguyen, Lam.
			Nguyen, Lam Van.
			Nguyen, Lam Van.
			Nguyen, Lam Van.
			Nguyen, Lan.
			Nguyen, Lang.
			Nguyen, Lang.
			Nguyen, Lanh.
			Nguyen, Lap Van.
			Nguyen, Lap Van.
			Nguyen, Le.
			Nguyen, Lien and Hang Luong.
			Nguyen, Lien Thi.
			Nguyen, Linda Oan.
			Nguyen, Linh Thi.
			Nguyen, Linh Van.
			Nguyen, Lintt Danny.
			Nguyen, Lluu.
			Nguyen, Loc.
			Nguyen, Loi.
			Nguyen, Loi.
			Nguyen, Long Phi.
			Nguyen, Long T.
			Nguyen, Long Viet.
			Nguyen, Luom T.
			Nguyen, Mai Van.
			Nguyen, Man.
			Nguyen, Mao-Van.
			Nguyen, Mary.
			Nguyen, Mary.
			Nguyen, Melissa.
			Nguyen, Minh.
			Nguyen, Minh.
			Nguyen, Minh.
			Nguyen, Minh.
			Nguyen, Minh.
			Nguyen, Minh Ngoc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Nguyen, Minh Van. Nguyen, Moot. Nguyen, Mui Van. Nguyen, Mung T. Nguyen, Muoi. Nguyen, My Le Thi. Nguyen, My Tan. Nguyen, My V. Nguyen, Nam Van. Nguyen, Nam Van. Nguyen, Nam Van. Nguyen, Nam Van. Nguyen, Nancy. Nguyen, Nancy. Nguyen, Nghi. Nguyen, Nghi Q. Nguyen, Nghia. Nguyen, Nghiep. Nguyen, Ngoc Tim. Nguyen, Ngoc Van. Nguyen, Nguyet. Nguyen, Nhi. Nguyen, Nho Van. Nguyen, Nina. Nguyen, Nuong. Nguyen, Peter. Nguyen, Peter Thang. Nguyen, Peter V. Nguyen, Phe. Nguyen, Phong. Nguyen, Phong Ngoc. Nguyen, Phong T. Nguyen, Phong Xuan. Nguyen, Phu Huu. Nguyen, Phuc. Nguyen, Phuoc H. Nguyen, Phuoc Van. Nguyen, Phuong. Nguyen, Phuong. Nguyen, Quang. Nguyen, Quang. Nguyen, Quang Dang. Nguyen, Quang Dinh. Nguyen, Quang Van. Nguyen, Quoc Van. Nguyen, Quyen Minh. Nguyen, Quyen T. Nguyen, Quyen-Van. Nguyen, Ran T. Nguyen, Randon. Nguyen, Richard. Nguyen, Richard Nghia. Nguyen, Rick Van. Nguyen, Ricky Tinh. Nguyen, Roe Van. Nguyen, Rose. Nguyen, Sam. Nguyen, Sandy Ha. Nguyen, Sang Van. Nguyen, Sau V. Nguyen, Si Ngoc. Nguyen, Son. Nguyen, Son Thanh. Nguyen, Son Van. Nguyen, Song V. Nguyen, Steve. Nguyen, Steve Q. Nguyen, Steven Giap. Nguyen, Sung. Nguyen, Tai. Nguyen, Tai The. Nguyen, Tai Thi. Nguyen, Tam.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Nguyen, Tam Minh.
			Nguyen, Tam Thanh.
			Nguyen, Tam V.
			Nguyen, Tam Van.
			Nguyen, Tan.
			Nguyen, Ten Tan.
			Nguyen, Thach.
			Nguyen, Thang.
			Nguyen, Thanh.
			Nguyen, Thanh.
			Nguyen, Thanh.
			Nguyen, Thanh Phuc.
			Nguyen, Thanh V.
			Nguyen, Thanh Van.
			Nguyen, Thanh Van.
			Nguyen, Thanh Van.
			Nguyen, Thanh Van.
			Nguyen, Thao.
			Nguyen, Thi Bich Hang.
			Nguyen, Thiet.
			Nguyen, Thiet.
			Nguyen, Tho Duke.
			Nguyen, Thoa D.
			Nguyen, Thoa Thi.
			Nguyen, Thomas.
			Nguyen, Thu.
			Nguyen, Thu and Rose.
			Nguyen, Thu Duc.
			Nguyen, Thu Van.
			Nguyen, Thuan.
			Nguyen, Thuan.
			Nguyen, Thuong.
			Nguyen, Thuong Van.
			Nguyen, Thuy.
			Nguyen, Thuyen.
			Nguyen, Thuyen.
			Nguyen, Tinh.
			Nguyen, Tinh Van.
			Nguyen, Toan.
			Nguyen, Toan Van.
			Nguyen, Tommy.
			Nguyen, Tony.
			Nguyen, Tony.
			Nguyen, Tony.
			Nguyen, Tony D.
			Nguyen, Tony Hong.
			Nguyen, Tony Si.
			Nguyen, Tra.
			Nguyen, Tra.
			Nguyen, Tracy T.
			Nguyen, Tri D.
			Nguyen, Trich Van.
			Nguyen, Trung Van.
			Nguyen, Tu Van.
			Nguyen, Tuan.
			Nguyen, Tuan A.
			Nguyen, Tuan H.
			Nguyen, Tuan Ngoc.
			Nguyen, Tuan Q.
			Nguyen, Tuan Van.
			Nguyen, Tung.
			Nguyen, Tuyen Duc.
			Nguyen, Tuyen Van.
			Nguyen, Ty and Ngoc Ngo.
			Nguyen, Van H.
			Nguyen, Van Loi.
			Nguyen, Vang Van.
			Nguyen, Viet.
			Nguyen, Viet.
			Nguyen, Viet V.
			Nguyen, Viet Van.
			Nguyen, Vinh Van.
			Nguyen, Vinh Van.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Nguyen, Vinh Van.
			Nguyen, VT.
			Nguyen, Vu Minh.
			Nguyen, Vu T.
			Nguyen, Vu Xuan.
			Nguyen, Vui.
			Nguyen, Vuong V.
			Nguyen, Xuong Kim.
			Nhan, Tran Quoc.
			Nhon, Seri.
			Nichols, Steve Anna.
			Nicholson, Gary.
			Nixon, Leonard.
			Noble, Earl.
			Noland, Terrel W.
			Normand, Timothy.
			Norris, Candace P.
			Norris, John A.
			Norris, Kenneth L.
			Norris, Kevin J.
			Nowell, James E.
			Noy, Phen.
			Nunez, Conrad.
			Nunez, Jody.
			Nunez, Joseph Paul.
			Nunez, Randy.
			Nunez, Wade Joseph.
			Nyuyen, Toan.
			Oberling, Darryl.
			O'Blance, Adam.
			O'Brien, Gary S.
			O'Brien, Mark.
			O'Brien, Michele.
			Ogden, John M.
			Oglesby, Henry.
			Oglesby, Phyllis.
			O'Gwynn, Michael P Sr.
			Ohmer, Eva G.
			Ohmer, George J.
			Olander, Hazel.
			Olander, Rodney.
			Olander, Roland J.
			Olander, Russell J.
			Olander, Thomas.
			Olano, Kevin.
			Olano, Owen J.
			Olano, Shelby F.
			Olds, Malcolm D Jr.
			Olinde, Wilfred J Jr.
			Oliver, Charles.
			O'Neil, Carey.
			Oracoy, Brad R.
			Orage, Eugene.
			Orlando, Het.
			Oteri, Robert F.
			Oubre, Faron P.
			Oubre, Thomas W.
			Ourks, SokHoms K.
			Owens, Larry E.
			Owens, Sheppard.
			Owens, Timothy.
			Pacaccio, Thomas Jr.
			Padgett, Kenneth J.
			Palmer, Gay Ann P.
			Palmer, John W.
			Palmer, Mack.
			Palmisano, Daniel P.
			Palmisano, Dwayne Jr.
			Palmisano, Kim.
			Palmisano, Larry J.
			Palmisano, Leroy J.
			Palmisano, Robin G.
			Pam, Phuong Bui.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Parfait, Antoine C Jr.
			Parfait, Jerry Jr.
			Parfait, John C.
			Parfait, Joshua K.
			Parfait, Mary F.
			Parfait, Mary S.
			Parfait, Olden G Jr.
			Parfait, Robert C Jr.
			Parfait, Robert C Sr.
			Parfait, Rodney.
			Parfait, Shane A.
			Parfait, Shelton J.
			Parfait, Timmy J.
			Parker, Clyde A.
			Parker, Franklin L.
			Parker, Paul A.
			Parker, Percy Todd.
			Parks, Daniel Duane.
			Parks, Ellery Doyle Jr.
			Parrett, Joseph D Jr.
			Parria, Danny.
			Parria, Gavin C Sr.
			Parria, Gillis F Jr.
			Parria, Gillis F Sr.
			Parria, Jerry D.
			Parria, Kip G.
			Parria, Lionel J Sr.
			Parria, Louis III.
			Parria, Louis J Sr.
			Parria, Louis Jr.
			Parria, Michael.
			Parria, Ronald.
			Parria, Ross.
			Parria, Troy M.
			Parrish, Charles.
			Parrish, Walter L.
			Passmore, Penny.
			Pate, Shane.
			Paterbaugh, Richard.
			Patingo, Roger D.
			Paul, Robert Emmett.
			Payne, John Francis.
			Payne, Stuart.
			Peatross, David A.
			Pelas, James Curtis.
			Pelas, Jeffery.
			Pellegrin, Corey P.
			Pellegrin, Curlynn.
			Pellegrin, James A Jr.
			Pellegrin, Jordey.
			Pellegrin, Karl.
			Pellegrin, Karl J.
			Pellegrin, Randy.
			Pellegrin, Randy Sr.
			Pellegrin, Rodney J Sr.
			Pellegrin, Samuel.
			Pellegrin, Troy Sr.
			Peltier, Clyde.
			Peltier, Rodney J.
			Pena, Bartolo Jr.
			Pena, Israel.
			Pendarvis, Gracie.
			Pennison, Elaine.
			Pennison, Milton G.
			Pequeno, Julius.
			Percle, David P.
			Perez, Allen M.
			Perez, David J.
			Perez, David P.
			Perez, Derek.
			Perez, Edward Jr.
			Perez, Henry Jr.
			Perez, Joe B.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Perez, Tilden A Jr.
			Perez, Warren A Jr.
			Perez, Warren A Sr.
			Perez, Wesley.
			Perrin, Dale.
			Perrin, David M.
			Perrin, Edward G Sr.
			Perrin, Errol Joseph Jr.
			Perrin, Jerry J.
			Perrin, Kenneth V.
			Perrin, Kevin.
			Perrin, Kline J Sr.
			Perrin, Kurt M.
			Perrin, Michael.
			Perrin, Michael A.
			Perrin, Murphy P.
			Perrin, Nelson C Jr.
			Perrin, Pershing J Jr.
			Perrin, Robert.
			Perrin, Tim J.
			Perrin, Tony.
			Persohn, William T.
			Peshoff, Kirk Lynn.
			Pete, Alfred F Jr.
			Pete, Alfred F Sr.
			Pfleeger, William A.
			Pham, An V.
			Pham, Anh My.
			Pham, Bob.
			Pham, Cho.
			Pham, Cindy.
			Pham, David.
			Pham, Dung.
			Pham, Dung Phuoc.
			Pham, Dung Phuoc.
			Pham, Duong Van.
			Pham, Gai.
			Pham, Hai.
			Pham, Hai Hong.
			Pham, Hien.
			Pham, Hien C.
			Pham, Hiep.
			Pham, Hieu.
			Pham, Huan Van.
			Pham, Hung.
			Pham, Hung V.
			Pham, Hung V.
			Pham, Huynh.
			Pham, John.
			Pham, Johnny.
			Pham, Joseph S.
			Pham, Kannin.
			Pham, Nga T.
			Pham, Nhung T.
			Pham, Osmond.
			Pham, Paul P.
			Pham, Phong-Thanh.
			Pham, Phung.
			Pham, Quoc V.
			Pham, Steve Ban.
			Pham, Steve V.
			Pham, Thai Van.
			Pham, Thai Van.
			Pham, Thanh.
			Pham, Thanh.
			Pham, Thanh V.
			Pham, Thinh.
			Pham, Thinh V.
			Pham, Tommy V.
			Pham, Tran and Thu Quang.
			Pham, Ut Van.
			Phan, Anh Thi.
			Phan, Banh Van.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Phan, Cong Van.
			Phan, Dan T.
			Phan, Hoang.
			Phan, Hung Thanh.
			Phan, Johnny.
			Phan, Lam.
			Phan, Luyen Van.
			Phan, Nam V.
			Phan, Thong.
			Phan, Tien V.
			Phan, Toan.
			Phan, Tu Van.
			Phat, Lam Mau.
			Phelps, John D.
			Phillips, Bruce A.
			Phillips, Danny D.
			Phillips, Gary.
			Phillips, Harry Louis.
			Phillips, James C Jr.
			Phillips, Kristrina W.
			Phipps, AW.
			Phonthaasa, Khaolop.
			Phorn, Phen.
			Pickett, Kathy.
			Picou, Calvin Jr.
			Picou, Gary M.
			Picou, Jennifer.
			Picou, Jerome J.
			Picou, Jordan J.
			Picou, Randy John.
			Picou, Ricky Sr.
			Picou, Terry.
			Pierce, Aaron.
			Pierce, Dean.
			Pierce, Elwood.
			Pierce, Imogene.
			Pierce, Stanley.
			Pierce, Taffie Boone.
			Pierre, Ivy.
			Pierre, Joseph.
			Pierre, Joseph C Jr.
			Pierre, Paul J.
			Pierre, Ronald J.
			Pierron, Jake.
			Pierron, Patsy H.
			Pierron, Roger D.
			Pinell, Ernie A.
			Pinell, Harry J Jr.
			Pinell, Jody J.
			Pinell, Randall James.
			Pinnell, Richard J.
			Pinnell, Robert.
			Pitre, Benton J.
			Pitre, Carol.
			Pitre, Claude A Sr.
			Pitre, Elrod.
			Pitre, Emily B.
			Pitre, Glenn P.
			Pitre, Herbert.
			Pitre, Jeannie.
			Pitre, Leo P.
			Pitre, Robert Jr.
			Pitre, Robin.
			Pitre, Ryan P.
			Pitre, Ted J.
			Pittman, Roger.
			Pizani, Bonnie.
			Pizani, Craig.
			Pizani, Jane.
			Pizani, Terrill J.
			Pizani, Terry M.
			Pizani, Terry M Jr.
			Plaisance, Arthur E.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Plaisance, Burgess.
			Plaisance, Darren.
			Plaisance, Dean J Sr.
			Plaisance, Dorothy B.
			Plaisance, Dwayne.
			Plaisance, Earl J Jr.
			Plaisance, Errance H.
			Plaisance, Evans P.
			Plaisance, Eves A III.
			Plaisance, Gideons.
			Plaisance, Gillis S.
			Plaisance, Henry A Jr.
			Plaisance, Jacob.
			Plaisance, Jimmie J.
			Plaisance, Joyce.
			Plaisance, Keith.
			Plaisance, Ken G.
			Plaisance, Lawrence J.
			Plaisance, Lucien Jr.
			Plaisance, Peter A Sr.
			Plaisance, Peter Jr.
			Plaisance, Richard J.
			Plaisance, Russel P.
			Plaisance, Russell P Sr.
			Plaisance, Thomas.
			Plaisance, Thomas J.
			Plaisance, Wayne P.
			Plaisance, Whitney III.
			Plork, Phan.
			Poche, Glenn J Jr.
			Poche, Glenn J Sr.
			Pockrus, Gerald.
			Poiencot, Russell Jr.
			Poillion, Charles A.
			Polito, Gerald.
			Polkey, Gary J.
			Polkey, Richard R Jr.
			Polkey, Ronald.
			Polkey, Shawn Michael.
			Pollet, Lionel J Sr.
			Pomgoria, Mario.
			Ponce, Ben.
			Ponce, Lewis B.
			Poon, Raymond.
			Pope, Robert.
			Popham, Winford A.
			Poppell, David M.
			Porche, Ricky J.
			Portier, Bobby.
			Portier, Chad.
			Portier, Corinne L.
			Portier, Penelope J.
			Portier, Robbie.
			Portier, Russel A Sr.
			Portier, Russell.
			Potter, Hubert Edward Jr.
			Potter, Robert D.
			Potter, Robert J.
			Pounds, Terry Wayne.
			Powers, Clyde T.
			Prejean, Dennis J.
			Price, Carl.
			Price, Curtis.
			Price, Edwin J.
			Price, Franklin J.
			Price, George J Sr.
			Price, Norris J Sr.
			Price, Steve J Jr.
			Price, Timmy T.
			Price, Wade J.
			Price, Warren J.
			Prihoda, Steve.
			Primeaux, Scott.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Pritchard, Dixie J.
			Pritchard, James Ross Jr.
			Prosperie, Claude J Jr.
			Prosperie, Myron.
			Prout, Rollen.
			Prout, Sharonski K.
			Prum, Thou.
			Pugh, Charles D Jr.
			Pugh, Charles Sr.
			Pugh, Cody.
			Pugh, Deanna.
			Pugh, Donald.
			Pugh, Nickolas.
			Punch, Alvin Jr.
			Punch, Donald J.
			Punch, Todd M.
			Punch, Travis J.
			Purata, Maria.
			Purse, Emil.
			Purvis, George.
			Quach, Duc.
			Quach, James D.
			Quach, Joe.
			Quach, Si Tan.
			Quinn, Dora M.
			Racca, Charles.
			Racine, Sylvan P Jr.
			Radulic, Igor.
			Ragas, Albert G.
			Ragas, Gene.
			Ragas, John D.
			Ragas, Jonathan.
			Ragas, Richard A.
			Ragas, Ronda S.
			Ralph, Lester B.
			Ramirez, Alfred J Jr.
			Randazzo, John A Jr.
			Randazzo, Rick A.
			Rando, Stanley D.
			Ranko, Ellis Gerald.
			Rapp, Dwayne.
			Rapp, Leroy and Sedonia.
			Rawlings, John H Sr.
			Rawlings, Ralph E.
			Rawls, Norman E.
			Ray, Leo.
			Ray, William C Jr.
			Raynor, Steven Earl.
			Readenour, Kelty O.
			Reagan, Roy.
			Reason, Patrick W.
			Reaux, Paul S Sr.
			Reaves, Craig A.
			Reaves, Laten.
			Rebert, Paul J Sr.
			Rebert, Steve M Jr.
			Rebstock, Charles.
			Recter, Lance Jr.
			Rector, Warren L.
			Redden, Yvonne.
			Regnier, Leoncea B.
			Remondet, Garland Jr.
			Renard, Lanny.
			Reno, Edward.
			Reno, George C.
			Reno, George H.
			Reno, George T.
			Reno, Harry.
			Revell, Ben David.
			Reyes, Carlton.
			Reyes, Dwight D Sr.
			Reynon, Marcello Jr.
			Rhodes, Randolph N.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Rhoto, Christopher L.
			Ribardi, Frank A.
			Rich, Wanda Heafner.
			Richard, Bruce J.
			Richard, David L.
			Richard, Edgar J.
			Richard, James Ray.
			Richard, Melissa.
			Richard, Randall K.
			Richardson, James T.
			Richert, Daniel E.
			Richo, Earl Sr.
			Richoux, Dudley Donald Jr.
			Richoux, Irvin J Jr.
			Richoux, Judy.
			Richoux, Larry.
			Richoux, Mary A.
			Riego, Raymond A.
			Riffle, Josiah B.
			Rigaud, Randall Ryan.
			Riggs, Jeffrey B.
			Riley, Jackie Sr.
			Riley, Raymond.
			Rinkus, Anthony J III.
			Rios, Amado.
			Ripp, Norris M.
			Robbins, Tony.
			Robert, Dan S.
			Roberts, Michael A.
			Robertson, Kevin.
			Robeson, Richard S Jr.
			Robichaux, Craig J.
			Robin, Alvin G.
			Robin, Cary Joseph.
			Robin, Charles R III.
			Robin, Danny J.
			Robin, Donald.
			Robin, Floyd A.
			Robin, Kenneth J Sr.
			Robin, Ricky R.
			Robinson, Johnson P III.
			Robinson, Walter.
			Roccaforte, Clay.
			Rodi, Dominick R.
			Rodi, Rhonda.
			Rodrigue, Brent J.
			Rodrigue, Carrol Sr.
			Rodrigue, Glenn.
			Rodrigue, Lerlene.
			Rodrigue, Reggie Sr.
			Rodrigue, Sonya.
			Rodrigue, Wayne.
			Rodriguez, Barry.
			Rodriguez, Charles V Sr.
			Rodriguez, Gregory.
			Rodriguez, Jesus.
			Rodriguez, Joseph C Jr.
			Roeum, Orn.
			Rogers, Barry David.
			Rogers, Chad.
			Rogers, Chad M.
			Rogers, Kevin J.
			Rogers, Nathan J.
			Rojas, Carlton J Sr.
			Rojas, Curtis Sr.
			Rojas, Dennis J Jr.
			Rojas, Dennis J Sr.
			Rojas, Gordon V.
			Rojas, Kerry D.
			Rojas, Kerry D Jr.
			Rojas, Randy J Sr.
			Rojas, Raymond J Jr.
			Roland, Brad.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Roland, Mathias C.
			Roland, Vincent.
			Rollins, Theresa.
			Rollo, Wayne A.
			Rome, Victor J IV.
			Romero, D H.
			Romero, Kardel J.
			Romero, Norman.
			Romero, Philip J.
			Ronquille, Glenn.
			Ronquille, Norman C.
			Ronquillo, Earl.
			Ronquillo, Richard J.
			Ronquillo, Timothy.
			Roseburrough, Charles R Jr.
			Ross, Dorothy.
			Ross, Edward Danny Jr.
			Ross, Leo L.
			Ross, Robert A.
			Roth, Joseph F Jr.
			Roth, Joseph M Jr.
			Rotolo, Carolyn.
			Rotolo, Feliz.
			Rouse, Jimmy.
			Roussel, Michael D Jr.
			Roy, Henry Lee Jr.
			Rudolph, Chad A.
			Ruiz, Donald W.
			Ruiz, James L.
			Ruiz, Paul E.
			Ruiz, Paul R.
			Russell, Bentley R.
			Russell, Casey.
			Russell, Daniel.
			Russell, James III.
			Russell, Julie Ann.
			Russell, Michael J.
			Russell, Nicholas M.
			Russell, Paul.
			Rustick, Kenneth.
			Ruttley, Adrian K.
			Ruttley, Ernest T Jr.
			Ruttley, JT.
			Ryan, James C Sr.
			Rybiski, Rhebb R.
			Ryder, Luther V.
			Sadler, Stewart.
			Sagnes, Everett.
			Saha, Amanda K.
			Saling, Don M.
			Saltalamacchia, Preston J.
			Saltalamacchia, Sue A.
			Salvato, Lawrence Jr.
			Samanie, Caroll J.
			Samanie, Frank J.
			Samsome, Don.
			Sanamo, Troy P.
			Sanchez, Augustine.
			Sanchez, Jeffery A.
			Sanchez, Juan.
			Sanchez, Robert A.
			Sanders, William Shannon.
			Sandras, R J.
			Sandras, R J Jr.
			Sandrock, Roy R III.
			Santini, Lindberg W Jr.
			Santiny, James.
			Santiny, Patrick.
			Sapia, Carroll J Jr.
			Sapia, Eddie J Jr.
			Sapia, Willard.
			Saturday, Michael Rance.
			Sauce, Carlton Joseph.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Sauce, Joseph C Jr. Saucier, Houston J. Sauls, Russell. Savage, Malcolm H. Savant, Raymond. Savoie, Allen. Savoie, Brent T. Savoie, James. Savoie, Merlin F Jr. Savoie, Reginald M II. Sawyer, Gerald. Sawyer, Rodney. Scarabin, Clifford. Scarabin, Michael J. Schaffer, Kelly. Schaubhut, Curry A. Schellinger, Lester B Jr. Schexnaydre, Michael. Schirmer, Robert Jr. Schjott, Joseph J Sr. Schlindwein, Henry. Schmit, Paul A Jr. Schmit, Paul A Sr. Schmit, Victor J Jr. Schouest, Ellis J III. Schouest, Ellis Jr. Schouest, Juston. Schouest, Mark. Schouest, Noel. Schrimpf, Robert H Jr. Schultz, Troy A. Schwartz, Sidney. Scott, Aaron J. Scott, Audie B. Scott, James E III. Scott, Milford P. Scott, Paul. Seabrook, Terry G. Seal, Charles T. Seal, Joseph G. Seaman, Garry. Seaman, Greg. Seaman, Ollie L Jr. Seaman, Ollie L Sr. Seang, Meng. Sehon, Robert Craig. Sekul, Morris G. Sekul, S George. Sellers, Isaac Charles. Seng, Sophan. Serigne, Adam R. Serigne, Elizabeth. Serigne, James J III. Serigne, Kimmie J. Serigne, Lisa M. Serigne, Neil. Serigne, O'Neil N. Serigne, Richard J Sr. Serigne, Rickey N. Serigne, Ronald Raymond. Serigne, Ronald Roch. Serigne, Ross. Serigny, Gail. Serigny, Wayne A. Serpas, Lenny Jr. Sessions, William O III. Sessions, William O Jr. Sevel, Michael D. Sevin, Carl Anthony. Sevin, Earline. Sevin, Janell A. Sevin, Joey. Sevin, Nac J.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Sevin, O'Neil and Symantha.
			Sevin, Phillip T.
			Sevin, Shane.
			Sevin, Shane Anthony.
			Sevin, Stanley J.
			Sevin, Willis.
			Seymour, Janet A.
			Shackelford, David M.
			Shaffer, Curtis E.
			Shaffer, Glynnon D.
			Shay, Daniel A.
			Shilling, Jason.
			Shilling, L E.
			Shugars, Robert L.
			Shutt, Randy.
			Sifuentes, Esteban.
			Sifuentes, Fernando.
			Silver, Curtis A Jr.
			Simon, Curnis.
			Simon, John.
			Simon, Leo.
			Simpson, Mark.
			Sims, Donald L.
			Sims, Mike.
			Singley, Charlie Sr.
			Singley, Glenn.
			Singley, Robert Joseph.
			Sirgo, Jace.
			Sisung, Walter.
			Sisung, Walter Jr.
			Skinner, Gary M Sr.
			Skinner, Richard.
			Skipper, Malcolm W.
			Skrmetta, Martin J.
			Smelker, Brian H.
			Smith, Brian.
			Smith, Carl R Jr.
			Smith, Clark W.
			Smith, Danny.
			Smith, Danny M Jr.
			Smith, Donna.
			Smith, Elmer T Jr.
			Smith, Glenda F.
			Smith, James E.
			Smith, Margie T.
			Smith, Mark A.
			Smith, Nancy F.
			Smith, Raymond C Sr.
			Smith, Tim.
			Smith, Walter M Jr.
			Smith, William T.
			Smithwick, Ted Wayne.
			Smoak, Bill.
			Smoak, William W III.
			Snell, Erick.
			Snodgrass, Sam.
			Soeung, Phat.
			Soileau, John C Sr.
			Sok, Kheng.
			Sok, Montha.
			Sok, Nhip.
			Solet, Darren.
			Solet, Donald M.
			Solet, Joseph R.
			Solet, Raymond J.
			Solorzano, Marilyn.
			Son, Kim.
			Son, Sam Nang.
			Son, Samay.
			Son, Thuong Cong.
			Soprano, Daniel.
			Sork, William.
			Sou, Mang.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Soudelier, Louis Jr.
			Soudelier, Shannon.
			Sour, Yem Kim.
			Southerland, Robert.
			Speir, Barbara Kay.
			Spell, Jeffrey B.
			Spell, Mark A.
			Spellmeyer, Joel F Sr.
			Spencer, Casey.
			Spiers, Donald A.
			Sprinkle, Avery M.
			Sprinkle, Emery Shelton Jr.
			Sprinkle, Joseph Warren.
			Squarsich, Kenneth J.
			Srely, Siphan.
			St Amant, Dana A.
			St Ann, Mr and Mrs Jerome K.
			St Pierre, Darren.
			St Pierre, Scott A.
			Staves, Patrick.
			Stechmann, Chad.
			Stechmann, Karl J.
			Stechmann, Todd.
			Steele, Arnold D Jr.
			Steele, Henry H III.
			Steen, Carl L.
			Steen, James D.
			Steen, Kathy G.
			Stein, Norris J Jr.
			Stelly, Adlar.
			Stelly, Carl A.
			Stelly, Chad P.
			Stelly, Delores.
			Stelly, Sandrus J Sr.
			Stelly, Sandrus Jr.
			Stelly, Toby J.
			Stelly, Veronica G.
			Stelly, Warren.
			Stephenson, Louis.
			Stevens, Alvin.
			Stevens, Curtis D.
			Stevens, Donald.
			Stevens, Glenda.
			Stewart, Chester Jr.
			Stewart, Derald.
			Stewart, Derek.
			Stewart, Fred.
			Stewart, Jason F.
			Stewart, Ronald G.
			Stewart, William C.
			Stiffler, Thanh.
			Stipelcovich, Lawrence L.
			Stipelcovich, Todd J.
			Stockfett, Brenda.
			Stokes, Todd.
			Stone-Rinkus, Pamela.
			Strader, Steven R.
			Strickland, Kenneth.
			Strickland, Rita G.
			Stuart, James Vernon.
			Stutes, Rex E.
			Sulak, Billy W.
			Sun, Hong Sreng.
			Surmik, Donald D.
			Swindell, Keith M.
			Sylve, Dennis A.
			Sylve, James L.
			Sylve, Nathan.
			Sylve, Scott.
			Sylvesr, Paul A.
			Ta, Ba Van.
			Ta, Chris.
			Tabb, Calvin.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Taliancich, Andrew. Taliancich, Ivan. Taliancich, Joseph M. Taliancich, Srecka. Tan, Ho Dung. Tan, Hung. Tan, Lan T. Tan, Ngo The. Tang, Thanh. Tanner, Robert Charles. Taravella, Raymond. Tassin, Alton J. Tassin, Keith P. Tate, Archie P. Tate, Terrell. Tauzier, Kevin M. Taylor, Doyle L. Taylor, Herman R. Taylor, Herman R Jr. Taylor, J P Jr. Taylor, John C. Taylor, Leander J Sr. Taylor, Leo Jr. Taylor, Lewis. Taylor, Nathan L. Taylor, Robert L. Taylor, Robert M. Teap, Phal. Tek, Heng. Templat, Paul. Terluin, John L III. Terrebonne, Adrein Scott. Terrebonne, Alphonse J. Terrebonne, Alton S Jr. Terrebonne, Alton S Sr. Terrebonne, Carol. Terrebonne, Carroll. Terrebonne, Chad. Terrebonne, Chad Sr. Terrebonne, Daniel J. Terrebonne, Donavon J. Terrebonne, Gary J Sr. Terrebonne, Jimmy Jr. Terrebonne, Jimmy Sr. Terrebonne, Kline A. Terrebonne, Lanny. Terrebonne, Larry F Jr. Terrebonne, Scott. Terrebonne, Steven. Terrebonne, Steven. Terrebonne, Toby J. Terrel, Chad J Sr. Terrell, C Todd. Terrio, Brandon James. Terrio, Harvey J Jr. Terry, Eloise P. Tesvich, Kuzma D. Thac, Dang Van. Thach, Phuong. Thai, Huynh Tan. Thai, Paul. Thai, Thomas. Thanh, Thien. Tharpe, Jack. Theriot, Anthony. Theriot, Carroll A Jr. Theriot, Clay J Jr. Theriot, Craig A. Theriot, Dean P. Theriot, Donnie. Theriot, Jeffery C. Theriot, Larry J. Theriot, Lynn.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Theriot, Mark A.
			Theriot, Roland P Jr.
			Theriot, Wanda J.
			Thibodaux, Jared.
			Thibodeaux, Bart James.
			Thibodeaux, Brian A.
			Thibodeaux, Brian M.
			Thibodeaux, Calvin A Jr.
			Thibodeaux, Fay F.
			Thibodeaux, Glenn P.
			Thibodeaux, Jeffrey.
			Thibodeaux, Jonathan.
			Thibodeaux, Josephine.
			Thibodeaux, Keith.
			Thibodeaux, Tony J.
			Thibodeaux, Warren J.
			Thidobaux, James V Sr.
			Thiet, Tran.
			Thomas, Alvin.
			Thomas, Brent.
			Thomas, Dally S.
			Thomas, Janie G.
			Thomas, John Richard.
			Thomas, Kenneth Ward.
			Thomas, Monica P.
			Thomas, Ralph L Jr.
			Thomas, Ralph Lee Jr.
			Thomas, Randall.
			Thomas, Robert W.
			Thomas, Willard N Jr.
			Thomassie, Gerard.
			Thomassie, Nathan A.
			Thomassie, Philip A.
			Thomassie, Ronald J.
			Thomassie, Tracy Joseph.
			Thompson, Bobbie.
			Thompson, David W.
			Thompson, Edwin A.
			Thompson, George.
			Thompson, James D Jr.
			Thompson, James Jr.
			Thompson, John E.
			Thompson, John R.
			Thompson, Randall.
			Thompson, Sammy.
			Thompson, Shawn.
			Thong, R.
			Thonn, John J Jr.
			Thonn, Victor J.
			Thorpe, Robert Lee Jr.
			Thurman, Charles E.
			Tiet, Thanh Duc.
			Tilghman, Gene E.
			Tillett, Billy Carl.
			Tillman, Lewis A Jr.
			Tillman, Timothy P and Yvonne M.
			Tillotson, Pat.
			Tinney, Mark A.
			Tisdale, Georgia W.
			Tiser, Oscar.
			Tiser, Thomas C Jr.
			Tiser, Thomas C Sr.
			To, Cang Van.
			To, Du Van.
			Todd, Fred Noel.
			Todd, Patricia J.
			Todd, Rebecca G.
			Todd, Robert C and Patricia J.
			Todd, Vonnie Frank Jr.
			Tompkins, Gerald Paul II.
			Toney, George Jr.
			Tong, Hai V.
			Tony, Linh C.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Toomer, Christina Abbott.
			Toomer, Christy.
			Toomer, Frank G Jr.
			Toomer, Jeffrey E.
			Toomer, Kenneth.
			Toomer, Lamar K.
			Toomer, Larry Curtis and Tina.
			Toomer, William Kemp.
			Torrible, David P.
			Torrible, Jason.
			Touchard, Anthony H.
			Touchard, John B Jr.
			Touchard, Paul V Jr.
			Touchet, Eldridge III.
			Touchet, Eldridge Jr.
			Toups, Anthony G.
			Toups, Bryan.
			Toups, Jeff.
			Toups, Jimmie J.
			Toups, Kim.
			Toups, Manuel.
			Toups, Ted.
			Toups, Tommy.
			Toureau, James.
			Tower, H Melvin.
			Townsend, Harmon Lynn.
			Townsend, Marion Brooks.
			Tra, Hop T.
			Trabeau, James D.
			Trahan, Allen A Jr.
			Trahan, Alvin Jr.
			Trahan, Druby.
			Trahan, Dudley.
			Trahan, Elie J.
			Trahan, Eric J.
			Trahan, James.
			Trahan, Karen C.
			Trahan, Lynn P Sr.
			Trahan, Ricky.
			Trahan, Ronald J.
			Trahan, Tracey L.
			Trahan, Wayne Paul.
			Tran, Allen Hai.
			Tran, Andana.
			Tran, Anh.
			Tran, Anh.
			Tran, Anh N.
			Tran, Bay V.
			Tran, Bay Van.
			Tran, Binh.
			Tran, Binh Van.
			Tran, Ca Van.
			Tran, Cam Van.
			Tran, Chau V.
			Tran, Chau Van.
			Tran, Chau Van.
			Tran, Chi T.
			Tran, Christina Phuong.
			Tran, Chu V.
			Tran, Cuong.
			Tran, Cuong.
			Tran, Danny Duc.
			Tran, Den.
			Tran, Dien.
			Tran, Dinh M.
			Tran, Dinh Q.
			Tran, Doan.
			Tran, Dung Van.
			Tran, Duoc.
			Tran, Duoc.
			Tran, Duong.
			Tran, Eric.
			Tran, Francis.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Tran, Francis.
			Tran, Giang.
			Tran, Giao.
			Tran, Ha Mike.
			Tran, Hai.
			Tran, Hien H.
			Tran, Hiep Phuoc.
			Tran, Hieu.
			Tran, Hoa.
			Tran, Hoa.
			Tran, Hue T.
			Tran, Huey.
			Tran, Hung.
			Tran, Hung.
			Tran, Hung.
			Tran, Hung P.
			Tran, Hung Van.
			Tran, Hung Van.
			Tran, Hung Viet.
			Tran, James N.
			Tran, John.
			Tran, Johnny Dinh.
			Tran, Joseph.
			Tran, Joseph T.
			Tran, Khan Van.
			Tran, Khanh.
			Tran, Kim.
			Tran, Kim Chi Thi.
			Tran, Lan Tina.
			Tran, Le and Phat Le.
			Tran, Leo Van.
			Tran, Loan.
			Tran, Long.
			Tran, Long Van.
			Tran, Luu Van.
			Tran, Ly.
			Tran, Ly Van.
			Tran, Mai Thi.
			Tran, Mary.
			Tran, Miel Van.
			Tran, Mien.
			Tran, Mike.
			Tran, Mike Dai.
			Tran, Minh Huu.
			Tran, Muoi.
			Tran, My T.
			Tran, Nam Van.
			Tran, Nang Van.
			Tran, Nghia and T Le Banh.
			Tran, Ngoc.
			Tran, Nhanh Van.
			Tran, Nhieu T.
			Tran, Nhieu Van.
			Tran, Nho.
			Tran, Peter.
			Tran, Phu Van.
			Tran, Phuc D.
			Tran, Phuc V.
			Tran, Phung.
			Tran, Quan Van.
			Tran, Quang Quang.
			Tran, Quang T.
			Tran, Quang Van.
			Tran, Qui V.
			Tran, Quy Van.
			Tran, Ran Van.
			Tran, Sarah T.
			Tran, Sau.
			Tran, Scotty.
			Tran, Son.
			Tran, Son Van.
			Tran, Steven Tuan.
			Tran, Tam.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Tran, Te Van. Tran, Than. Tran, Thang Van. Tran, Thanh. Tran, Thanh. Tran, Thanh Van. Tran, Theresa. Tran, Thi. Tran, Thich Van. Tran, Thien. Tran, Thien Van. Tran, Thiet. Tran, Tommy. Tran, Tony. Tran, Tri. Tran, Trinh. Tran, Trung. Tran, Trung Van. Tran, Tu. Tran, Tuan. Tran, Tuan. Tran, Tuan Minh. Tran, Tuong Van. Tran, Tuyet Thi. Tran, Van T. Tran, Victor. Tran, Vinh. Tran, Vinh Q. Tran, Vinh Q. Tran, Vui Kim. Trang, Tan. Trapp, Tommy. Treadaway, Michael. Tregle, Curtis. Treloar, William Paul. Treuil, Gary J. Trevino, Manuel. Treybig, E H "Buddy" Jr. Triche, Donald G. Trieu, Hiep and Jackie. Trieu, Hung Hoa. Trieu, Jasmine and Ly. Trieu, Lorie and Tam. Trieu, Tam. Trinh, Christopher B. Trinh, Philip P. Trosclair, Clark K. Trosclair, Clark P. Trosclair, Eugene P. Trosclair, James J. Trosclair, Jerome. Trosclair, Joseph. Trosclair, Lori. Trosclair, Louis V. Trosclair, Patricia. Trosclair, Randy. Trosclair, Ricky. Trosclair, Wallace Sr. Truong, Andre. Truong, Andre V. Truong, Be Van. Truong, Benjamin. Truong, Dac. Truong, Huan. Truong, Kim. Truong, Nhut Van. Truong, Steve. Truong, Tham T. Truong, Thanh Minh. Truong, Them Van. Truong, Thom. Truong, Timmy. Trutt, George W Sr.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Trutt, Wanda.
			Turlich, Mervin A.
			Turner, Calvin L.
			Tyre, John.
			Upton, Terry R.
			Valentino, J G Jr.
			Valentino, James.
			Vallot, Christopher A.
			Vallot, Nancy H.
			Valure, Hugh P.
			Van Alsburg, Charles.
			Van Gordstnoven, Jean J.
			Van Nguyen, Irving.
			Van, Than.
			Van, Vui.
			Vanacor, Kathy D.
			Vanacor, Malcolm J Sr.
			Vanicor, Bobbie.
			VanMeter, Matthew T.
			VanMeter, William Earl.
			Varney, Randy L.
			Vath, Raymond S.
			Veasel, William E III.
			Vegas, Brien J.
			Vegas, Percy J.
			Vegas, Terry J.
			Vegas, Terry J Jr.
			Vegas, Terry Jr.
			Vela, Peter.
			Verdin, Aaron.
			Verdin, Av.
			Verdin, Bradley J.
			Verdin, Brent A.
			Verdin, Charles A.
			Verdin, Charles E.
			Verdin, Coy P.
			Verdin, Curtis A Jr.
			Verdin, Delphine.
			Verdin, Diana A.
			Verdin, Ebro W.
			Verdin, Eric P.
			Verdin, Ernest Joseph Sr.
			Verdin, Jeff C.
			Verdin, Jeffrey A.
			Verdin, Jessie J.
			Verdin, John P.
			Verdin, Joseph.
			Verdin, Joseph A Jr.
			Verdin, Joseph Cleveland.
			Verdin, Joseph D Jr.
			Verdin, Joseph S.
			Verdin, Joseph W Jr.
			Verdin, Justilien G.
			Verdin, Matthew W Sr.
			Verdin, Michel A.
			Verdin, Paul E.
			Verdin, Perry Anthony.
			Verdin, Rodney.
			Verdin, Rodney P.
			Verdin, Rodney P.
			Verdin, Skylar.
			Verdin, Timmy J.
			Verdin, Toby.
			Verdin, Tommy P.
			Verdin, Tony J.
			Verdin, Troy.
			Verdin, Vincent.
			Verdin, Viness Jr.
			Verdin, Wallace P.
			Verdin, Webb A Sr.
			Verdin, Wesley D Sr.
			Verdine, Jimmy R.
			Vermeulen, Joseph Thomas.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Verret, Darren L.
			Verret, Donald J.
			Verret, Ernest J Sr.
			Verret, James A.
			Verret, Jean E.
			Verret, Jimmy J Sr.
			Verret, Johnny R.
			Verret, Joseph L.
			Verret, Paul L.
			Verret, Preston.
			Verret, Quincy.
			Verret, Ronald Paul Sr.
			Versaggi, Joseph A.
			Versaggi, Salvatore J.
			Vicknair, Brent J Sr.
			Vicknair, Duane P.
			Vicknair, Henry Dale.
			Vicknair, Ricky A.
			Vidrine, Bill and Kathi.
			Vidrine, Corey.
			Vidrine, Richard.
			Vila, William F.
			Villers, Joseph A.
			Vincent, Gage Tyler.
			Vincent, Gene.
			Vincent, Gene B.
			Vincent, Robert N.
			Vise, Charles E III.
			Vizier, Barry A.
			Vizier, Christopher.
			Vizier, Clovis J III.
			Vizier, Douglas M.
			Vizier, Tommie Jr.
			Vo, Anh M.
			Vo, Chin Van.
			Vo, Dam.
			Vo, Dan M.
			Vo, Dany.
			Vo, Day V.
			Vo, Duong V.
			Vo, Dustin.
			Vo, Hai Van.
			Vo, Hanh Xuan.
			Vo, Hien Van.
			Vo, Hoang The.
			Vo, Hong.
			Vo, Hung Thanh.
			Vo, Huy K.
			Vo, Johnny.
			Vo, Kent.
			Vo, Lien Van.
			Vo, Man.
			Vo, Mark Van.
			Vo, Minh Hung.
			Vo, Minh Ngoc.
			Vo, Minh Ray.
			Vo, Mong V.
			Vo, My Dung Thi.
			Vo, My Lynn.
			Vo, Nga.
			Vo, Nhon Tai.
			Vo, Nhu Thanh.
			Vo, Quang Minh.
			Vo, Sang M.
			Vo, Sanh M.
			Vo, Song V.
			Vo, Tan Thanh.
			Vo, Tan Thanh.
			Vo, Thanh Van.
			Vo, Thao.
			Vo, Thuan Van.
			Vo, Tien Van.
			Vo, Tom.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Vo, Tong Ba. Vo, Trao Van. Vo, Truong. Vo, Van Van. Vo, Vi Viet. Vodopija, Benjamin S. Vogt, James L. Voisin, Eddie James. Voisin, Joyce. Voison, Jamie. Von Harten, Harold L. Vona, Michael A. Vongrith, Richard. Vossler, Kirk. Vu, Hung. Vu, John H. Vu, Khanh. Vu, Khoi Van. Vu, Quan Quoc. Vu, Ruyen Viet. Vu, Sac. Vu, Sean. Vu, Tam. Vu, Thiem Ngoc. Vu, Thuy. Vu, Tom. Vu, Tu Viet. Vu, Tuyen Jack. Vu, Tuyen Viet. Wade, Calvin J Jr. Wade, Gerard. Waguespack, David M Sr. Waguespack, Randy P II. Wainwright, Vernon. Walker, Jerry. Walker, Rogers H. Wallace, Dennis. Wallace, Edward. Wallace, John A. Wallace, John K. Wallace, Trevis L. Waller, Jack Jr. Waller, John M. Waller, Mike. Wallis, Craig A. Wallis, Keith. Walters, Samuel G. Walton, Marion M. Wannage, Edward Joseph. Wannage, Fred Jr. Wannage, Frederick W Sr. Ward, Clarence Jr. Ward, Olan B. Ward, Walter M. Washington, Clifford. Washington, John Emile III. Washington, Kevin. Washington, Louis N. Wattigney, Cecil K Jr. Wattigney, Michael. Watts, Brandon A. Watts, Warren. Webb, Bobby. Webb, Bobby N. Webb, Josie M. Webre, Donald. Webre, Dudley A. Webster, Harold. Weeks, Don Franklin. Weems, Laddie E. Weinstein, Barry C. Weiskopf, Rodney. Weiskopf, Rodney Sr.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Weiskopf, Todd. Welch, Amos J. Wells, Douglas E. Wells, Stephen Ray. Wendling, Steven W. Wescovich, Charles W. Wescovich, Wesley Darryl. Whatley, William J. White, Allen Sr. White, Charles. White, Charles Fulton. White, David L. White, Gary Farrell. White, James Hugh. White, Perry J. White, Raymond. White, Robert Sr. Wicher, John. Wiggins, Chad M Sr. Wiggins, Ernest. Wiggins, Harry L. Wiggins, Kenneth A. Wiggins, Matthew. Wilbur, Gerald Anthony. Wilcox, Robert. Wiles, Alfred Adam. Wiles, Glen Gilbert. Wiles, Sonny Joel Sr. Wilkerson, Gene Dillard and Judith. Wilkinson, William Riley. Williams, Allen Jr. Williams, Andrew. Williams, B Dean. Williams, Clyde L. Williams, Dale A. Williams, Emmett J. Williams, Herman J Jr. Williams, J T. Williams, John A. Williams, Johnny Paul. Williams, Joseph H. Williams, Kirk. Williams, Leopold A. Williams, Mark A. Williams, Mary Ann C. Williams, Melissa A. Williams, Nina. Williams, Oliver Kent. Williams, Parish. Williams, Roberto. Williams, Ronnie. Williams, Scott A. Williams, Steven. Williams, Thomas D. Williamson, Richard L Sr. Willyard, Derek C. Willyard, Donald R. Wilson, Alward. Wilson, Hosea. Wilson, Joe R. Wilson, Jonathan. Wilson, Katherine. Wiltz, Allen. Wing, Melvin. Wiseman, Allen. Wiseman, Clarence J Jr. Wiseman, Jean P. Wiseman, Joseph A. Wiseman, Michael T Jr. Wiseman, Michael T Sr. Wolfe, Charles. Woods, John T III. Wright, Curtis.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Wright, Leonard.
			Wright, Randy D.
			Yeamans, Douglas.
			Yeamans, Neil.
			Yeamans, Ronnie.
			Yoeuth, Peon.
			Yopp, Harold.
			Yopp, Jonathon.
			Yopp, Milton Thomas.
			Young, James.
			Young, Taing.
			Young, Willie.
			Yow, Patricia D.
			Yow, Richard C.
			Zanca, Anthony V Sr.
			Zar, Ashley A.
			Zar, Carl J.
			Zar, John III.
			Zar, Steve.
			Zar, Steven.
			Zar, Troy A.
			Zerinque, John S Jr.
			Zirlott, Curtis.
			Zirlott, Jason D.
			Zirlott, Jeremy.
			Zirlott, Kimberly.
			Zirlott, Milton.
			Zirlott, Perry.
			Zirlott, Rosa H.
			Zito, Brian C.
			Zuvich, Michael A Jr.
			Ad Hoc Shrimp Trade Action Committee.
			Bryan Fishermens' Co-Op Inc.
			Louisiana Shrimp Association.
			South Carolina Shrimpers Association.
			Vietnamese-American Commerical Fisherman's Union.
			3–G Enterprize dba Griffin's Seafood.
			A & G Trawlers Inc.
			A & T Shrimping.
			A Ford Able Seafood.
			A J Horizon Inc.
			A&M Inc.
			A&R Shrimp Co.
			A&T Shrimping.
			AAH Inc.
			AC Christopher Sea Food Inc.
			Ace of Trade LLC.
			Adriana Corp.
			AJ Boats Inc.
			AJ Horizon Inc.
			AJ's Seafood.
			Alario Inc.
			Alcide J Adams Jr.
			Aldebaran Inc.
			Aldebran Inc.
			Alexander and Dola.
			Alfred Englade Inc.
			Alfred Trawlers Inc.
			Allen Hai Tran dba Kien Giang.
			Al's Shrimp Co.
			Al's Shrimp Co LLC.
			Al's Shrimp Co LLC.
			Al's Whosale & Retail.
			Alton Cheeks.
			Amada Inc.
			Amber Waves.
			Amelia Isle.
			American Beauty.
			American Beauty Inc.
			American Eagle Enterprise Inc.
			American Girl.
			American Seafood.
			Americana Shrimp.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Amvina II. Amvina II. Amy D Inc. Amy's Seafood Mart. An Kit. Andy Boy. Andy's SFD. Angel Annie Inc. Angel Leigh. Angel Seafood Inc. Angela Marie Inc. Angela Marie Inc. Angelina Inc. Anna Grace LLC. Anna Grace LLC. Annie Thornton Inc. Annie Thornton Inc. Anthony Boy I. Anthony Boy I. Anthony Fillinich Sr. Apalachee Girl Inc. Aparicio Trawlers Inc dba Marcosa. Apple Jack Inc. Aquila Seafood Inc. Aquillard Seafood. Argo Marine . Arnold's Seafood. Arroya Cruz Inc. Art & Red Inc. Arthur Chisholm. A-Seafood Express. Ashley Deeb Inc. Ashley W 648675. Asian Gulf Corp. Atlantic. Atocha Troy A LeCompte Sr. Atwood Enterprises. B & B Boats Inc. B & B Seafood. B&J Seafood. BaBe Inc. Baby Ruth. Bailey, David B Sr—Bailey's Seafood. Bailey's Seafood of Cameron Inc. Bait Inc. Bait Inc. Baker Shrimp. Bama Love Inc. Bama Sea Products Inc. Bao Hung Inc. Bao Hung Inc. Bar Shrimp. Barbara Brooks Inc. Barbara Brooks Inc. Barisich Inc. Barisich Inc. Barnacle-Bill Inc. Barney's Bait & Seafood. Barrios Seafood. Bay Boy. Bay Islander Inc. Bay Sweeper Nets. Baye's Seafood 335654. Bayou Bounty Seafood LLC. Bayou Caddy Fisheries Inc. Bayou Carlin Fisheries. Bayou Carlin Fisheries Inc. Bayou Shrimp Processors Inc. BBC Trawlers Inc. BBS Inc. Beachcomber Inc. Beachcomber Inc. Bea's Corp.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Beecher's Seafood.
			Believer Inc.
			Bennett's Seafood.
			Benny Alexie.
			Bergeron's Seafood.
			Bertileana Corp.
			Best Sea-Pack of Texas Inc.
			Beth Lomonte Inc.
			Beth Lomonte Inc.
			Betty B.
			Betty H Inc.
			Bety Inc.
			BF Millis & Sons Seafood.
			Big Daddy Seafood Inc.
			Big Grapes Inc.
			Big Kev.
			Big Oak Seafood.
			Big Oak Seafood.
			Big Oaks Seafood.
			Big Shrimp Inc.
			Billy J Foret—BJF Inc.
			Billy Sue Inc.
			Billy Sue Inc.
			Biloxi Freezing & Processing.
			Binh Duong.
			BJB LLC.
			Blain & Melissa Inc.
			Blanca Cruz Inc.
			Blanchard & Cheramie Inc.
			Blanchard Seafood.
			Blazing Sun Inc.
			Blazing Sun Inc.
			Blue Water Seafood.
			Bluewater Shrimp Co.
			Bluffton Oyster Co.
			Boat Josey Wales.
			Boat Josey Wales LLC.
			Boat Monica Kiff.
			Boat Warrior.
			Bob-Rey Fisheries Inc.
			Bodden Trawlers Inc.
			Bolillo Prieto Inc.
			Bon Secour Boats Inc.
			Bon Secour Fisheries Inc.
			Bon Secur Boats Inc.
			Bonnie Lass Inc.
			Boone Seafood.
			Bosarge Boats.
			Bosarge Boats.
			Bosarge Boats Inc.
			Bottom Verification LLC.
			Bowers Shrimp.
			Bowers Shrimp Farm.
			Bowers Valley Shrimp Inc.
			Brad Friloux.
			Brad Nicole Seafood.
			Bradley John Inc.
			Bradley's Seafood Mkt.
			Brava Cruz Inc.
			Brenda Darlene Inc.
			Brett Anthony.
			Bridgeside Marina.
			Bridgeside Seafood.
			Bridget's Seafood Service Inc.
			Bridget's Seafood Service Inc.
			BRS Seafood.
			BRS Seafood.
			Bruce W Johnson Inc.
			Bubba Daniels Inc.
			Bubba Tower Shrimp Co.
			Buccaneer Shrimp Co.
			Buchmer Inc.
			Buck & Peed Inc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Buddy Boy Inc.
			Buddy's Seafood.
			Bumble Bee Seafoods LLC.
			Bumble Bee Seafoods LLC.
			Bundy Seafood.
			Bundy's Seafood.
			Bunny's Shrimp.
			Burgbe Gump Seafood.
			Burnell Trawlers Inc.
			Burnell Trawlers Inc/Mamacita/Swamp Irish.
			Buster Brown Inc.
			By You Seafood.
			C & R Trawlers Inc.
			CA Magwood Enterprises Inc.
			Cajun Queen of LA LLC.
			Calcasien Point Bait N More Inc.
			Cam Ranh Bay.
			Camardelle's Seafood.
			Candy Inc.
			Cao Family Inc.
			Cap Robear.
			Cap'n Bozo Inc.
			Capn Jasper's Seafood Inc.
			Capt Aaron.
			Capt Adam.
			Capt Anthony Inc.
			Capt Bean (Richard A Ragas).
			Capt Beb Inc.
			Capt Bill Jr Inc.
			Capt Brother Inc.
			Capt Bubba.
			Capt Buck.
			Capt Carl.
			Capt Carlos Trawlers Inc.
			Capt Chance Inc.
			Capt Christopher Inc.
			Capt Chuckie.
			Capt Craig.
			Capt Craig Inc.
			Capt Crockett Inc.
			Capt Darren Hill Inc.
			Capt Dennis Inc.
			Capt Dickie Inc.
			Capt Dickie V Inc.
			Capt Doug.
			Capt Eddie Inc.
			Capt Edward Inc.
			Capt Eli's.
			Capt Elroy Inc.
			Capt Ernest LLC.
			Capt Ernest LLC.
			Capt GDA Inc.
			Capt George.
			Capt H & P Corp.
			Capt Havey Seafood.
			Capt Henry Seafood Dock.
			Capt Huy.
			Capt JDL Inc.
			Capt Jimmy Inc.
			Capt Joe.
			Capt Johnny II.
			Capt Jonathan.
			Capt Jonathan Inc.
			Capt Joshua Inc.
			Capt Jude 520556 13026.
			Capt Ken.
			Capt Kevin Inc.
			Capt Ko Inc.
			Capt Koung Lim.
			Capt Larry Seafood Market.
			Capt Larry's Inc.
			Capt LC Corp.
			Capt LD Seafood Inc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Capt Linton Inc.
			Capt Mack Inc.
			Capt Marcus Inc.
			Capt Morris.
			Capt Opie.
			Capt P Inc.
			Capt Pappie Inc.
			Capt Pat.
			Capt Paw Paw.
			Capt Pete Inc.
			Capt Peter Long Inc.
			Capt Pool Bear II's Seafood.
			Capt Quang.
			Capt Quina Inc.
			Capt Richard.
			Capt Ross Inc.
			Capt Roy.
			Capt Russell Jr Inc.
			Capt Ryan Inc.
			Capt Ryan's.
			Capt Sam.
			Capt Sang.
			Capt Scar Inc.
			Capt Scott.
			Capt Scott 5.
			Capt Scott Seafood.
			Capt Sparkers Shrimp.
			Capt St Peter.
			Capt T&T Corp.
			Capt Thien.
			Capt Tommy Inc.
			Capt Two Inc.
			Capt Van's Seafood.
			Capt Walley Inc.
			Capt Zoe Inc.
			Captain Allen's Bait & Tackle.
			Captain Arnulfo Inc.
			Captain Blair Seafood.
			Captain Dexter Inc.
			Captain D's.
			Captain Homer Inc.
			Captain Jeff.
			Captain JH III Inc.
			Captain Joshua.
			Captain Larry'O.
			Captain Miss Cammy Nhung.
			Captain Regis.
			Captain Rick.
			Captain T/Thiet Nguyen.
			Captain Tony.
			Captain Truong Phi Corp.
			Captain Vinh.
			Cap't-Brandon.
			Captian Thomas Trawler Inc.
			Carlino Seafood.
			Carly Sue Inc.
			Carmelita Inc.
			Carolina Lady Inc.
			Carolina Sea Foods Inc.
			Caroline and Calandra Inc.
			Carson & Co.
			Carson & Co Inc.
			Cary Encalade Trawling.
			Castellano's Corp.
			Cathy Cheramie Inc.
			CBS Seafood & Catering LLC.
			CBS Seafood & Catering LLC.
			Cecilia Enterprise Inc.
			CF Gollot & Son Sfd Inc.
			CF Gollott and Son Seafood Inc.
			Chackbay Lady.
			Chad & Chaz LLC.
			Challenger Shrimp Co Inc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Chalmette Marine Supply Co Inc.
			Chalmette Net & Trawl.
			Chapa Shrimp Trawlers.
			Chaplin Seafood.
			Charlee Girl.
			Charles Guidry Inc.
			Charles Sellers.
			Charles White.
			Charlotte Maier Inc.
			Charlotte Maier Inc.
			Chef Seafood Ent LLC.
			Cheramies Landing.
			Cherry Pt Seafood.
			Cheryl Lynn Inc.
			Chez Francois Seafood.
			Chilling Pride Inc.
			Chin Nguyen Co.
			Chin Nguyen Co.
			Chinatown Seafood Co Inc.
			Chines Cajun Net Shop.
			Chris Hansen Seafood.
			Christian G Inc.
			Christina Leigh Shrimp Co.
			Christina Leigh Shrimp Company Inc.
			Christina Leigh Shrimp Company Inc.
			Cieutat Trawlers.
			Cinco de Mayo Inc.
			Cindy Lynn Inc.
			Cindy Mae Inc.
			City Market Inc.
			CJ Seafood.
			CJs Seafood.
			Clifford Washington.
			Clinton Hayes—C&S Enterprises of Brandon Inc.
			Cochran's Boat Yard.
			Colorado River Seafood.
			Colson Marine.
			Comm Fishing.
			Commercial Fishing Service CFS Seafoods.
			Cong Son.
			Cong-An Inc.
			Country Girl Inc.
			Country Inc.
			Courtney & Ory Inc.
			Cowdrey Fish.
			Cptn David.
			Crab-Man Bait Shop.
			Craig A Wallis, Keith Wallis dba W&W Dock & 10 boats.
			Cristina Seafood.
			CRJ Inc.
			Cruillas Inc.
			Crusader Inc.
			Crustacean Frustration.
			Crystal Gayle Inc.
			Crystal Light Inc.
			Crystal Light Inc.
			Curtis Henderson.
			Custom Pack Inc.
			Custom Pack Inc.
			Cyril's Ice House & Supplies.
			D & A Seafood.
			D & C Seafood Inc.
			D & J Shrimping LLC.
			D & M Seafood & Rental LLC.
			D Ditcharo Jr Seafoods.
			D G & R C Inc.
			D S L & R Inc.
			D&T Marine Inc.
			Daddys Boys.
			DaHa Inc/Cat'Sass.
			DAHAPA Inc.
			Dale's Seafood Inc.
			Dang Nguyen.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Daniel E Lane.
			Danny Boy Inc.
			Danny Max.
			David & Danny Inc.
			David C Donnelly.
			David Daniels.
			David Ellison Jr.
			David Gollott Sfd Inc.
			David W Casanova's Seafood.
			David White.
			David's Shrimping Co.
			Davis Seafood.
			Davis Seafood.
			Davis Seafood Inc.
			Dawn Marie.
			Deana Cheramie Inc.
			Deanna Lea.
			Dean's Seafood.
			Deau Nook.
			Debbe Anne Inc.
			Deep Sea Foods Inc/Jubilee Foods Inc.
			Delcambre Seafood.
			Dell Marine Inc.
			Dennis Menesses Seafood.
			Dennis' Seafood Inc.
			Dennis Shrimp Co Inc.
			Desperado.
			DFS Inc.
			Diamond Reef Seafood.
			Diem Inc.
			Dinh Nguyen.
			Dixie General Store LLC.
			Dixie Twister.
			Dominick's Seafood Inc.
			Don Paco Inc.
			Donald F Boone II.
			Dong Nguyen.
			Donini Seafoods Inc.
			Donna Marie.
			Donovan Tien I & II.
			Dopson Seafood.
			Dorada Cruz Inc.
			Double Do Inc.
			Double Do Inc.
			Doug and Neil Inc.
			Douglas Landing.
			Doxey's Oyster & Shrimp.
			Dragnet II.
			Dragnet Inc.
			Dragnet Seafood LLC.
			Dubberly's Mobile Seafood.
			Dudenhefer Seafood.
			Dugas Shrimp Co LLC.
			Dunamis Towing Inc.
			Dupree's Seafood.
			Duval & Duval Inc.
			Dwayne's Dream Inc.
			E & M Seafood.
			E & T Boating.
			E Gardner McClellan.
			E&E Shrimp Co Inc.
			East Coast Seafood.
			East Coast Seafood.
			East Coast Seafood.
			East Coast Seafood.
			Edisto Queen LLC.
			Edward Garcia Trawlers.
			EKV Inc.
			El Pedro Fishing & Trading Co Inc.
			Eliminator Inc.
			Elizabeth Nguyen.
			Ellerbee Seafoods.
			Ellie May.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Elmira Pflueckhahn Inc.
			Elmira Pflueckhahn Inc.
			Elvira G Inc.
			Emily's SFD.
			Emmanuel Inc.
			Ensenada Cruz Inc.
			Enterprise.
			Enterprise Inc.
			Equalizer Shrimp Co Inc.
			Eric F Dufrene Jr LLC.
			Erica Lynn Inc.
			Erickson & Jensen Seafood Packers.
			Ethan G Inc.
			Excalibur LLC.
			F/V Apalachee Warrior.
			F/V Atlantis I.
			F/V Capt Walter B.
			F/V Captain Andy.
			F/V Eight Flags.
			F/V Mary Ann.
			F/V Miss Betty.
			F/V Morning Star.
			F/V Nam Linh.
			F/V Olivia B.
			F/V Phuoc Thanh Mai II.
			F/V Sea Dolphin.
			F/V Southern Grace.
			F/V Steven Mai.
			F/V Steven Mai II.
			Famer Boys Catfish Kitchens.
			Family Thing.
			Father Dan Inc.
			Father Lasimir Inc.
			Father Mike Inc.
			Fiesta Cruz Inc.
			Fine Shrimp Co.
			Fire Fox Inc.
			Fisherman's Reef Shrimp Co.
			Fishermen IX Inc.
			Fishing Vessel Enterprise Inc.
			Five Princesses Inc.
			FKM Inc.
			Fleet Products Inc.
			Flower Shrimp House.
			Flowers Seafood Co.
			Floyd's Wholesale Seafood Inc.
			Fly By Night Inc.
			Forest Billiot Jr.
			Fortune Shrimp Co Inc.
			FP Oubre.
			Francis Brothers Inc.
			Francis Brothers Inc.
			Francis III.
			Frank Toomer Jr.
			Fran-Tastic Too.
			Frederick-Dan.
			Freedom Fishing Inc.
			Freeman Seafood.
			Frelich Seafood Inc.
			Frenchie D–282226.
			Fripp Point Seafood.
			G & L Trawling Inc.
			G & O Shrimp Co Inc.
			G & O Trawlers Inc.
			G & S Trawlers Inc.
			G D Ventures II Inc.
			G G Seafood.
			G R LeBlanc Trawlers Inc.
			Gail's Bait Shop.
			Gale Force Inc.
			Gambler Inc.
			Gambler Inc.
			Garijak Inc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Gary F White.
			Gator's Seafood.
			Gay Fish Co.
			Gay Fish Co.
			GeeChee Fresh Seafood.
			Gemita Inc.
			Gene P Callahan Inc.
			George J Price Sr Ent Inc.
			Georgia Shrimp Co LLC.
			Gerica Marine.
			Gilden Enterprises.
			Gillikin Marine Railways Inc.
			Gina K Inc.
			Gisco Inc.
			Gisco Inc.
			Glenda Guidry Inc.
			Gloria Cruz Inc.
			Go Fish Inc.
			God's Gift.
			God's Gift Shrimp Vessel.
			Gogie.
			Gold Coast Seafood Inc.
			Golden Gulf Coast Pkg Co Inc.
			Golden Phase Inc.
			Golden Text Inc.
			Golden Text Inc.
			Golden Text Inc.
			Goldenstar.
			Gollott Brothers Sfd Co Inc.
			Gollott's Oil Dock & Ice House Inc.
			Gonzalez Trawlers Inc.
			Gore Enterprises Inc.
			Gore Enterprizes Inc.
			Gore Seafood Co.
			Gore Seafood Inc.
			Gove Lopez.
			Graham Fisheries Inc.
			Graham Shrimp Co Inc.
			Graham Shrimp Co Inc.
			Gramps Shrimp Co.
			Grandma Inc.
			Grandpa's Dream.
			Grandpa's Dream.
			Granny's Garden and Seafood.
			Green Flash LLC.
			Greg Inc.
			Gregory Mark Gaubert.
			Gregory Mark Gaubert.
			Gregory T Boone.
			Gros Tete Trucking Inc.
			Guidry's Bait Shop.
			Guidry's Net Shop.
			Gulf Central Seaood Inc.
			Gulf Crown Seafood Co Inc.
			Gulf Fish Inc.
			Gulf Fisheries Inc.
			Gulf Island Shrimp & Seafood II LLC.
			Gulf King Services Inc.
			Gulf Pride Enterprises Inc.
			Gulf Seaway Seafood Inc.
			Gulf Shrimp.
			Gulf South Inc.
			Gulf Stream Marina LLC.
			Gulf Sweeper Inc (Trawler Gulf Sweeper).
			Gypsy Girl Inc.
			H & L Seafood.
			Hack Berry Seafood.
			Hagen & Miley Inc.
			Hailey Marie Inc.
			Hanh Lai Inc.
			Hannah Joyce Inc.
			Hardy Trawlers.
			Hardy Trawlers.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Harrington Fish Co Inc.
			Harrington Seafood & Supply Inc.
			Harrington Shrimp Co Inc.
			Harrington Trawlers Inc.
			Harris Fisheries Inc.
			Hazel's Hustler.
			HCP LLC.
			Heather Lynn Inc.
			Heavy Metal Inc.
			Hebert Investments Inc.
			Hebert's Mini Mart LLC.
			Helen E Inc.
			Helen Kay Inc.
			Helen Kay Inc.
			Helen W Smith Inc.
			Henderson Seafood.
			Henry Daniels Inc.
			Hermosa Cruz Inc.
			Hi Seas of Dulac Inc.
			Hien Le Van Inc.
			High Hope Inc.
			Hoang Anh.
			Hoang Long I, II.
			Holland Enterprises.
			Holly Beach Seafood.
			Holly Marie's Seafood Market.
			Hombre Inc.
			Home Loving Care Co.
			Hondumex Ent Inc.
			Hong Nga Inc.
			Hongri Inc.
			Houston Foret Seafood.
			Howerin Trawlers Inc.
			HTH Marine Inc.
			Hubbard Seafood.
			Hurricane Emily Seafood Inc.
			Hutcherson Christian Shrimp Inc.
			Huyen Inc.
			Icy Seafood II Inc.
			ICY Seafood Inc.
			Icy Seafood Inc.
			Ida's Seafood Rest & Market.
			Ike & Zack Inc.
			Independent Fish Company Inc.
			Inflation Inc.
			Integrity Fisheries Inc.
			Integrity Fishing Inc.
			International Oceanic Ent.
			Interstate Vo LLC.
			Intracoastal Seafood Inc.
			Iorn Will Inc.
			Irma Trawlers Inc.
			Iron Horse Inc.
			Isabel Maier Inc.
			Isabel Maier Inc.
			Isla Cruz Inc.
			J & J Rentals Inc.
			J & J Trawler's Inc.
			J & R Seafood.
			J Collins Trawlers.
			J D Land Co.
			Jackie & Hiep Trieu.
			Jacob A Inc.
			Jacquelin Marie Inc.
			Jacquelin Marie Inc.
			James D Quach Inc.
			James E Scott III.
			James F Dubberly.
			James Gadson.
			James J Matherne Jr.
			James J Matherne Sr.
			James Kenneth Lewis Sr.
			James LaRive Jr.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			James W Green Jr dba Miss Emilie Ann. James W Hicks. Janet Louise Inc. Jani Marie. JAS Inc. JBS Packing Co Inc. JBS Packing Inc. JCM. Jean's Bait. Jeff Chancey. Jemison Trawler's Inc. Jenna Dawn LLC. Jennifer Nguyen—Capt T. Jensen Seafood Pkg Co Inc. Jesse LeCompte Jr. Jesse LeCompte Sr. Jesse Shantelle Inc. Jessica Ann Inc. Jessica Inc. Jesus G Inc. Jimmy and Valerie Bonvillain. Jimmy Le Inc. Jim's Cajen Shrimp. Joan of Arc Inc. JoAnn and Michael W Daigle. Jody Martin. Joe Quach. Joel's Wild Oak Bait Shop & Fresh Seafood. John A Norris. John J Alexie. John Michael E Inc. John V Alexie. Johnny & Joyce's Seafood. Johnny O Co. Johnny's Seafood. John's Seafood. Joker's Wild. Jones—Kain Inc. Joni John Inc (Leon J Champagne). Jon's C Seafood Inc. Joseph Anthony. Joseph Anthony Inc. Joseph Garcia. Joseph Martino. Joseph Martino Corp. Joseph T Vermeulen. Josh & Jake Inc. Joya Cruz Inc. JP Fisheries. Julie Ann LLC. Julie Hoang. Julie Shrimp Co Inc (Trawler Julie). Julio Gonzalez Boat Builders Inc. Justin Dang. JW Enterprise. K & J Trawlers. K&D Boat Company. K&S Enterprises Inc. Kalliainen Seafoods Inc. KAM Fishing. Kandi Sue Inc. Karl M Belsome LLC. KBL Corp. KDH Inc. Keith M Swindell. Kellum's Seafood. Kellum's Seafood. Kelly Marie Inc. Ken Lee's Dock LLC. Kenneth Guidry. Kenny-Nancy Inc. Kentucky Fisheries Inc. Kentucky Trawlers Inc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Kevin & Bryan (M/V).
			Kevin Dang.
			Khang Dang.
			Khanh Huu Vu.
			Kheng Sok Shrimping.
			Kim & James Inc.
			Kim Hai II Inc.
			Kim Hai Inc.
			Kim's Seafood.
			Kingdom World Inc.
			Kirby Seafood.
			Klein Express.
			KMB Inc.
			Knight's Seafood Inc.
			Knight's Seafood Inc.
			Knowles Noel Camardelle.
			Kramer's Bait Co.
			Kris & Cody Inc.
			KTC Fishery LLC.
			L & M.
			L & N Friendship Corp.
			L & O Trawlers Inc.
			L & T Inc.
			L&M.
			LA—3184 CA.
			La Belle Idee.
			La Macarela Inc.
			La Pachita Inc.
			LA–6327–CA.
			LaBauve Inc.
			LaBauve Inc.
			Lade Melissa Inc.
			Lady Agnes II.
			Lady Agnes III.
			Lady Amelia Inc.
			Lady Anna I.
			Lady Anna II.
			Lady Barbara Inc.
			Lady Carolyn Inc.
			Lady Catherine.
			Lady Chancery Inc.
			Lady Chelsea Inc.
			Lady Danielle.
			Lady Debra Inc.
			Lady Dolcina Inc.
			Lady Gail Inc.
			Lady Katherine Inc.
			Lady Kelly Inc.
			Lady Kelly Inc.
			Lady Kristie.
			Lady Lavang LLC.
			Lady Liberty Seafood Co.
			Lady Lynn Ltd.
			Lady Marie Inc.
			Lady Melissa Inc.
			Lady Shelly.
			Lady Shelly.
			Lady Snow Inc.
			Lady Stephanie.
			Lady Susie Inc.
			Lady Kim T Inc.
			Lady TheLna.
			Lady Toni Inc.
			Lady Veronica.
			Lafitte Frozen Foods Corp.
			Lafont Inc.
			Lafourche Clipper Inc.
			Lafourche Clipper Inc.
			Lamarah Sue Inc.
			Lan Chi Inc.
			Lan Chi Inc.
			Lancero Inc.
			Lanny Renard and Daniel Bourque.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Lapeyrouse Seafood Bar Groc Inc. Larry G Kellum Sr. Larry Scott Freeman. Larry W Hicks. Lasseigne & Sons Inc. Laura Lee. Lauren O. Lawrence Jacobs Sfd. Lazaretta Packing Inc. Le & Le Inc. Le Family Inc. Le Family Inc. Le Tra Inc. Leek & Millington Trawler Privateeer. Lee's Sales & Distribution. Leonard Shrimp Producers Inc. Leoncea B Regnier. Lerin Lane. Li Johnson. Liar Liar. Libertad Fisheries Inc. Liberty I. Lighthouse Fisheries Inc. Lil Aly. Lil Arthur Inc. Lil BJ LLC. Lil Robbie Inc. Lil Robbie Inc. Lil Robin. Lil Robin. Lilla. Lincoln. Linda & Tot Inc. Linda Cruz Inc. Linda Hoang Shrimp. Linda Lou Boat Corp. Linda Lou Boat Corp. Lisa Lynn Inc. Lisa Lynn Inc. Little Andrew Inc. Little Andy Inc. Little Arthur. Little David Gulf Trawler Inc. Little Ernie Gulf Trawler Inc. Little Ken Inc. Little Mark. Little William Inc. Little World. LJL Inc. Long Viet Nguyen. Longwater Seafood dba Ryan H Longwater. Louisiana Gulf Shrimp LLC. Louisiana Lady Inc. Louisiana Man. Louisiana Newpack Shrimp Co Inc. Louisiana Pride Seafood Inc. Louisiana Pride Seafood Inc. Louisiana Seafood Dist LLC. Louisiana Shrimp & Packing Inc. Louisiana Shrimp and Packing Co Inc. Lovely Daddy II & III. Lovely Jennie. Low Country Lady (Randolph N Rhodes). Low County Lady. Luchador Inc. Lucky. Lucky I. Lucky Jack Inc. Lucky Lady. Lucky Lady II. Lucky Leven Inc. Lucky MV. Lucky Ocean.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Lucky Sea Star Inc.
			Lucky Star.
			Lucky World.
			Lucky's Seafood Market & Poboys LLC.
			Luco Drew's.
			Luisa Inc.
			Lupe Martinez Inc.
			LV Marine Inc.
			LW Graham Inc.
			Lyle LeCompte.
			Lynda Riley Inc.
			Lynda Riley Inc.
			M & M Seafood.
			M V Sherry D.
			M V Tony Inc.
			M&C Fisheries.
			M/V Baby Doll.
			M/V Chevo's Bitch.
			M/V Lil Vicki.
			M/V Loco-N Motion.
			M/V Patsy K #556871.
			M/V X L.
			Mabry Allen Miller Jr.
			Mad Max Seafood.
			Madera Cruz Inc.
			Madison Seafood.
			Madlin Shrimp Co Inc.
			Malibu.
			Malolo LLC.
			Mamacita Inc.
			Man Van Nguyen.
			Manteo Shrimp Co.
			Marco Corp.
			Marcos A.
			Maria Elena Inc.
			Maria Sandi.
			Mariachi Trawlers Inc.
			Mariah Jade Shrimp Company.
			Marie Teresa Inc.
			Marine Fisheries.
			Marisa Elida Inc.
			Mark and Jace.
			Marleann.
			Martin's Fresh Shrimp.
			Mary Bea Inc.
			Master Brandon Inc.
			Master Brock.
			Master Brock.
			Master Dylan.
			Master Gerald Trawlers Inc.
			Master Hai.
			Master Hai II.
			Master Henry.
			Master Jared Inc.
			Master Jhy Inc.
			Master John Inc.
			Master Justin Inc.
			Master Justin Inc.
			Master Ken Inc.
			Master Kevin Inc.
			Master Martin Inc.
			Master Mike Inc.
			Master NT Inc.
			Master Pee-Wee.
			Master Ronald Inc.
			Master Scott.
			Master Scott II.
			Master Seelos Inc.
			Master T.
			Master Tai LLC.
			Master Tai LLC.
			Mat Roland Seafood Co.
			Maw Doo.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Mayflower. McQuaig Shrimp Co Inc. Me Kong. Melerine Seafood. Melody Shrimp Co. Mer Shrimp Inc. Michael Lynn. Michael Nguyen. Michael Saturday's Fresh Every Day South Carolina. Shrimp. Mickey Nelson Net Shop. Mickey's Net. Midnight Prowler. Mike's Seafood Inc. Miley's Seafood Inc. Militello and Son Inc. Miller & Son Seafood Inc. Miller Fishing. Milliken & Son's. Milton J Dufrene and Son Inc. Milton Yopp—Capt'n Nathan & Thomas Winfield. Minh & Liem Doan. Mis Quynh Chi II. Miss Adrianna Inc. Miss Alice Inc. Miss Ann Inc. Miss Ann Inc. Miss Ashleigh. Miss Ashleigh Inc. Miss Barbara. Miss Barbara Inc. Miss Bernadette A Inc. Miss Bertha (M/V). Miss Beverly Kay. Miss Brenda. Miss Candace. Miss Candace Nicole Inc. Miss Carla Jean Inc. Miss Caroline Inc. Miss Carolyn Louise Inc. Miss Caylee. Miss Charlotte Inc. Miss Christine III. Miss Cleda Jo Inc. Miss Courtney Inc. Miss Courtney Inc. Miss Cynthia. Miss Danielle Gulf Trawler Inc. Miss Danielle LLC. Miss Dawn. Miss Ellie Inc. Miss Faye LLC. Miss Fina Inc. Miss Georgia Inc. Miss Hannah. Miss Hannah Inc. Miss Hazel Inc. Miss Hilary Inc. Miss Jennifer Inc. Miss Joanna Inc. Miss Julia. Miss Kandy Tran LLC. Miss Kandy Tran LLC. Miss Karen. Miss Kathi Inc. Miss Kathy. Miss Kaylyn LLC. Miss Khayla. Miss Lil. Miss Lillie Inc. Miss Liz Inc. Miss Loraine. Miss Loraine Inc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Miss Lori Dawn IV Inc.
			Miss Lori Dawn V Inc.
			Miss Lori Dawn VI Inc.
			Miss Lori Dawn VII Inc.
			Miss Lorie Inc.
			Miss Luana D Shrimp Co.
			Miss Luana D Shrimp Co.
			Miss Madeline Inc.
			Miss Madison.
			Miss Marie.
			Miss Marie Inc.
			Miss Marilyn Louis Inc.
			Miss Marilyn Louise.
			Miss Marilyn Louise Inc.
			Miss Marissa Inc.
			Miss Martha Inc.
			Miss Martha Inc.
			Miss Mary T.
			Miss Myle.
			Miss Narla.
			Miss Nicole.
			Miss Nicole Inc.
			Miss Plum Inc.
			Miss Quynh Anh I.
			Miss Quynh Anh I LLC.
			Miss Quynh Anh II LLC.
			Miss Redemption LLC.
			Miss Rhianna Inc.
			Miss Sambath.
			Miss Sandra II.
			Miss Sara Ann.
			Miss Savannah.
			Miss Savannah II.
			Miss Soriya.
			Miss Suzanne.
			Miss Sylvia.
			Miss Than.
			Miss Thom.
			Miss Thom Inc.
			Miss Tina Inc.
			Miss Trinh Trinh.
			Miss Trisha Inc.
			Miss Trisha Inc.
			Miss Verna Inc.
			Miss Vicki.
			Miss Victoria Inc.
			Miss Vivian Inc.
			Miss WillaDean.
			Miss Winnie Inc.
			Miss Yvette Inc.
			Miss Yvonne.
			Misty Morn Eat.
			Misty Star.
			MJM Seafood Inc.
			M'M Shrimp Co Inc.
			Mom & Dad Inc.
			Mona-Dianne Seafood.
			Montha Sok and Tan No Le.
			Moon River Inc.
			Moon Tillett Fish Co Inc.
			Moonlight.
			Moonlight Mfg.
			Moore Trawlers Inc.
			Morgan Creek Seafood.
			Morgan Rae Inc.
			Morning Star.
			Morrison Seafood.
			Mother Cabrini.
			Mother Teresa Inc.
			Mr & Mrs Inc.
			Mr & Mrs Inc.
			Mr Coolly.
			Mr Fox.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Mr Fox.
			Mr G.
			Mr Gaget LLC.
			Mr Henry.
			Mr Natural Inc.
			Mr Neil.
			Mr Phil T Inc.
			Mr Sea Inc.
			Mr Verdin Inc.
			Mr Williams.
			Mrs Judy Too.
			Mrs Tina Lan Inc.
			Ms Alva Inc.
			Ms An.
			My Angel II.
			My Blues.
			My Dad Whitney Inc.
			My Girls LLC.
			My Thi Tran Inc.
			My Three Sons Inc.
			My V Le Inc.
			My-Le Thi Nguyen.
			Myron A Smith Inc.
			Nancy Joy.
			Nancy Joy Inc.
			Nancy Joy Inc.
			Nanny Granny Inc.
			Nanny Kat Seafood LLC.
			Napolean Seafoods.
			Napoleon II.
			Napoleon Seafood.
			Napoleon SF.
			Naquin's Seafood.
			Nautilus LLC.
			Nelma Y Lane.
			Nelson and Son.
			Nelson Trawlers Inc.
			Nelson's Quality Shrimp Company.
			Nevgulmarco Co Inc.
			New Deal Comm Fishing.
			New Way Inc.
			Nguyen Day Van.
			Nguyen Express.
			Nguyen Int'l Enterprises Inc.
			Nguyen Shipping Inc.
			NHU UYEN.
			Night Moves of Cut Off Inc.
			Night Shift LLC.
			Night Star.
			North Point Trawlers Inc.
			North Point Trawlers Inc.
			Nuestra Cruz Inc.
			Nunez Seafood.
			Oasis.
			Ocean Bird Inc.
			Ocean Breeze Inc.
			Ocean Breeze Inc.
			Ocean City Corp.
			Ocean Emperor Inc.
			Ocean Harvest Wholesale Inc.
			Ocean Pride Seafood Inc.
			Ocean Seafood.
			Ocean Select Seafood LLC.
			Ocean Springs Seafood Market Inc.
			Ocean Wind Inc.
			Oceanica Cruz Inc.
			Odin LLC.
			Old Maw Inc.
			Ole Holbrook's Fresh Fish Market LLC.
			Ole Nelle.
			One Stop Bait & Ice.
			Open Sea Inc.
			Orage Enterprises Inc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Orn Roeum Shrimping.
			Otis Cantrelle Jr.
			Otis M Lee Jr.
			Owens Shrimping.
			Palmetto Seafood Inc.
			Papa Rod Inc.
			Papa T.
			Pappy Inc.
			Pappy's Gold.
			Parfait Enterprises Inc.
			Paris/Asia.
			Parramore Inc.
			Parrish Shrimping Inc.
			Pascagoula Ice & Freezer Co Inc.
			Pat-Lin Enterprises Inc.
			Patricia Foret.
			Patrick Sutton Inc.
			Patty Trish Inc.
			Paul Piazza and Son Inc.
			Paw Paw Allen.
			Paw Paw Pride Inc.
			Pearl Inc dba Indian Ridge Shrimp Co.
			Pei Gratia Inc.
			Pelican Point Seafood Inc.
			Penny V LLC.
			Perlita Inc.
			Perseverance I LLC.
			Pete & Queenie Inc.
			Phat Le and Le Tran.
			Phi Long Inc.
			Phi-Ho LLC.
			Pip's Place Marina Inc.
			Plaisance Trawlers Inc.
			Plata Cruz Inc.
			Poc-Tal Trawlers Inc.
			Pointe-Aux-Chene Marina.
			Pontchautrain Blue Crab.
			Pony Express.
			Poppee.
			Poppy's Pride Seafood.
			Port Bolivar Fisheries Inc.
			Port Marine Supplies.
			Port Royal Seafood Inc.
			Poteet Seafood Co Inc.
			Potter Boats Inc.
			Price Seafood Inc.
			Prince of Tides.
			Princess Ashley Inc.
			Princess Celine Inc.
			Princess Cindy Inc.
			Princess Lorie LLC.
			Princess Mary Inc.
			Prosperity.
			PT Fisheries Inc.
			Punch's Seafood Mkt.
			Purata Trawlers Inc.
			Pursuer Inc.
			Quality Seafood.
			Quang Minh II Inc.
			Queen Lily Inc.
			Queen Mary.
			Queen Mary Inc.
			Quinta Cruz Inc.
			Quoc Bao Inc.
			Quynh NHU Inc.
			Quynh Nhu Inc.
			R & J Inc.
			R & K Fisheries LLC.
			R & L Shrimp Inc.
			R & P Fisheries.
			R & R Bait/Seafood.
			R & S Shrimping.
			R & T Atocha LLC.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			R&D Seafood.
			R&K Fisheries LLC.
			R&R Seafood.
			RA Lesso Brokerage Co Inc.
			RA Lesso Seafood Co Inc.
			Rachel-Jade.
			Ralph Lee Thomas Jr.
			Ralph W Jones.
			Ramblin Man Inc.
			Ranchero Trawlers Inc.
			Randall J Pinell Inc.
			Randall J Pinell Inc.
			Randall K and Melissa B Richard.
			Randall Pinell.
			Randy Boy Inc.
			Randy Boy Inc.
			Rang Dong.
			Raul L Castellanos.
			Raul's Seafood.
			Raul's Seafood.
			Rayda Cheramie Inc.
			Raymond LeBouef.
			RCP Seafood I II III.
			RDR Shrimp Inc.
			Reagan's Seafood.
			Rebecca Shrimp Co Inc.
			Rebel Seafood.
			Regulus.
			Rejimi Inc.
			Reno's Sea Food.
			Res Vessel.
			Reyes Trawlers Inc.
			Rick's Seafood Inc.
			Ricky B LLC.
			Ricky G Inc.
			Riffle Seafood.
			Rigolets Bait & Seafood LLC.
			Riverside Bait & Tackle.
			RJ's.
			Roatex Ent Inc.
			Robanie C Inc.
			Robanie C Inc.
			Robanie C Inc.
			Robert E Landry.
			Robert H Schrimpf.
			Robert Johnson.
			Robert Keenan Seafood.
			Robert Upton or Terry Upton.
			Robert White Seafood.
			Rockin Robbin Fishing Boat Inc.
			Rodney Hereford Jr.
			Rodney Hereford Sr.
			Rodney Hereford Sr.
			Roger Blanchard Inc.
			Rolling On Inc.
			Romo Inc.
			Ronald Louis Anderson Jr.
			Rosa Marie Inc.
			Rose Island Seafood.
			RPM Enterprises LLC.
			Rubi Cruz Inc.
			Ruf-N-Redy Inc.
			Rutley Boys Inc.
			Sadie D Seafood.
			Safe Harbour Seafood Inc.
			Salina Cruz Inc.
			Sally Kim III.
			Sally Kim IV.
			Sam Snodgrass & Co.
			Samaira Inc.
			San Dia.
			Sand Dollar Inc.
			Sandy N.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Sandy O Inc.
			Santa Fe Cruz Inc.
			Santa Maria I Inc.
			Santa Maria II.
			Santa Monica Inc.
			Scavanger.
			Scooby Inc.
			Scooby Inc.
			Scottie and Juliette Dufrene.
			Scottie and Juliette Dufrene.
			Sea Angel.
			Sea Angel Inc.
			Sea Bastion Inc.
			Sea Drifter Inc.
			Sea Durbin Inc.
			Sea Eagle.
			Sea Eagle Fisheries Inc.
			Sea Frontier Inc.
			Sea Gold Inc.
			Sea Gulf Fisheries Inc.
			Sea Gypsy Inc.
			Sea Hawk I Inc.
			Sea Horse Fisheries.
			Sea Horse Fisheries Inc.
			Sea King Inc.
			Sea Pearl Seafood Company Inc.
			Sea Queen IV.
			Sea Trawlers Inc.
			Sea World.
			Seabrook Seafood Inc.
			Seabrook Seafood Inc.
			Seafood & Us Inc.
			Seaman's Magic Inc.
			Seaman's Magic Inc.
			Seaside Seafood Inc.
			Seaweed 2000.
			Seawolf Seafood.
			Second Generation Seafood.
			Shark Co Seafood Inter Inc.
			Sharon—Ali Michelle Inc.
			Shelby & Barbara Seafood.
			Shelby & Barbara Seafood.
			Shelia Marie LLC.
			Shell Creek Seafood Inc.
			Shirley Elaine.
			Shirley Girl LLC.
			Shrimp Boat Patrice.
			Shrimp Boating Inc.
			Shrimp Express.
			Shrimp Man.
			Shrimp Networks Inc.
			Shrimp Trawler.
			Shrimper.
			Shrimper.
			Shrimpy's.
			Si Ky Lan Inc.
			Si Ky Lan Inc.
			Si Ky Lan Inc.
			Sidney Fisheries Inc.
			Silver Fox.
			Silver Fox LLC.
			Simon.
			Sims Shrimping.
			Skip Toomer Inc.
			Skip Toomer Inc.
			Skyla Marie Inc.
			Smith & Sons Seafood Inc.
			Snowdrift.
			Snowdrift.
			Sochenda.
			Soeung Phat.
			Son T Le Inc.
			Son's Pride Inc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Sophie Marie Inc.
			Soul Mama Inc.
			Souther Obsession Inc.
			Southern Lady.
			Southern Nightmare Inc.
			Southern Star.
			Southshore Seafood.
			Spencers Seafood.
			Sprig Co Inc.
			St Anthony Inc.
			St Daniel Phillip Inc.
			St Dominic.
			St Joseph.
			St Joseph.
			St Joseph II Inc.
			St Joseph III Inc.
			St Joseph IV Inc.
			St Martin.
			St Martyrs VN.
			St Mary Seafood.
			St Mary Seven.
			St Mary Tai.
			St Michael Fuel & Ice Inc.
			St Michael's Ice & Fuel.
			St Peter.
			St Peter 550775.
			St Teresa Inc.
			St Vincent Andrew Inc.
			St Vincent Gulf Shrimp Inc.
			St Vincent One B.
			St Vincent One B Inc.
			St Vincent SF.
			St Vincent Sfd Inc.
			Start Young Inc.
			Steamboat Bills Seafood.
			Stella Mestre Inc.
			Stephen Dantin Jr.
			Stephney's Seafood.
			Stipelcovich Marine Wks.
			Stone-Co Farms LP.
			Stone-Co Farms LP.
			Stormy Sean Inc.
			Stormy Seas Inc.
			Sun Star Inc.
			Sun Swift Inc.
			Sunshine.
			Super Coon Inc.
			Super Cooper Inc.
			Swamp Irish Inc.
			Sylvan P Racine Jr—Capt Romain.
			T & T Seafood.
			T Brothers.
			T Cvitanovich Seafood LLC.
			Ta Do.
			Ta T Vo Inc.
			Ta T Vo Inc.
			Tana Inc.
			Tanya Lea Inc.
			Tanya Lea Inc.
			Tanya Lea Inc.
			Tasha Lou.
			T-Brown Inc.
			Tee Frank Inc.
			Tee Tigre Inc.
			Tercera Cruz Inc.
			Terrebonne Seafood Inc.
			Terri Monica.
			Terry Luke Corp.
			Terry Luke Corp.
			Terry Luke Corp.
			Terry Lynn Inc.
			Te-Sam Inc.
			Texas 1 Inc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Texas 18 Inc.
			Texas Lady Inc.
			Texas Pack Inc.
			Tex-Mex Cold Storage Inc.
			Tex-Mex Cold Storage Inc.
			Thai & Tran Inc.
			Thai Bao Inc.
			Thanh Phong.
			The Boat Phat Tai.
			The Fishermans Dock.
			The Last One.
			The Light House Bait & Seafood Shack LLC.
			The Mayporter Inc.
			The NGO.
			The Seafood Shed.
			Thelma J Inc.
			Theresa Seafood Inc.
			Third Tower Inc.
			Thomas Winfield—Capt Nathan.
			Thompson Bros.
			Three C's.
			Three Dads.
			Three Sons.
			Three Sons Inc.
			Three Sons Inc.
			Thunder Roll.
			Thunderbolt Fisherman's Seafood Inc.
			Thy Tra Inc.
			Thy Tra Inc.
			Tidelands Seafood Co Inc.
			Tiffani Claire Inc.
			Tiffani Claire Inc.
			Tiger Seafood.
			Tikede Inc.
			Timmy Boy Corp.
			Tina Chow.
			Tina T LLC.
			Tino Mones Seafood.
			TJ's Seafood.
			Toan Inc.
			Todd Co.
			Todd's Fisheries.
			Tom LE LLC.
			Tom Le LLC.
			Tom N & Bill N Inc.
			Tommy Bui dba Mana II.
			Tommy Cheramie Inc.
			Tommy Gulf Sea Food Inc.
			Tommy's Seafood Inc.
			Tonya Jane Inc.
			Tony-N.
			Tookie Inc.
			Tot & Linda Inc.
			T-Pops Inc.
			Tran Phu Van.
			Tran's Express Inc.
			Travis—Shawn.
			Travis—Shawn.
			Trawler Azteca.
			Trawler Becky Lyn Inc.
			Trawler Capt GC.
			Trawler Capt GC II.
			Trawler Dalia.
			Trawler Doctor Bill.
			Trawler Gulf Runner.
			Trawler HT Seaman.
			Trawler Joyce.
			Trawler Kristi Nicole.
			Trawler Kyle & Courtney.
			Trawler Lady Catherine.
			Trawler Lady Gwen Doe.
			Trawler Linda B Inc.
			Trawler Linda June.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Trawler Little Brothers. Trawler Little Gavino. Trawler Little Rookie Inc. Trawler Mary Bea. Trawler Master Alston. Trawler Master Jeffery Inc. Trawler Michael Anthony Inc. Trawler Mildred Barr. Trawler Miss Alice Inc. Trawler Miss Jamie. Trawler Miss Kelsey. Trawler Miss Sylvia Inc. Trawler Mrs Viola. Trawler Nichols Dream. Trawler Raindear Partnership. Trawler Rhonda Kathleen. Trawler Rhonda Lynn. Trawler Sandra Kay. Trawler Sarah Jane. Trawler Sea Wolf. Trawler Sea Wolf. Trawler SS Chaplin. Trawler The Mexican. Trawler Wallace B. Trawler Wylie Milam. Triple C Seafood. Triple T Enterprises Inc. Triplets Production. Tropical SFD. Troy A LeCompte Sr. True World Foods Inc. T's Seafood. Tu Viet Vu. TVN Marine Inc. TVN Marine Inc. Two Flags Inc. Tyler James. Ultima Cruz Inc. UTK Enterprises Inc. V & B Shrimping LLC. Valona Sea Food. Valona Seafood Inc. Van Burren Shrimp Co. Vaquero Inc. Varon Inc. Venetian Isles Marina. Venice Seafood Exchange Inc. Venice Seafood LLC. Vera Cruz Inc. Veronica Inc. Versaggi Shrimp Corp. Victoria Rose Inc. Viet Giang Corp. Vigilante Trawlers Inc. Village Creek Seafood. Villers Seafood Co Inc. Vina Enterprises Inc. Vincent L Alexie Jr. Vincent Piazza Jr & Sons Seafood Inc. Vin-Penny. Vivian Lee Inc. Von Harten Shrimp Co Inc. VT & L Inc. Vu NGO. Vu-Nguyen Partners. W L & O Inc. Waccamaw Producers. Wait-N-Sea Inc. Waller Boat Corp. Walter R Hicks. Ward Seafood Inc. Washington Seafood. Watermen Industries Inc.

Commerce case No.	Commission case No.	Product/Country	Petitioners/Supporters
			Watermen Industries Inc.
			Waymaker Inc.
			Wayne Estay Shrimp Co Inc.
			WC Trawlers Inc.
			We Three Inc.
			We Three Inc.
			Webster's Inc.
			Weems Bros.
			Weems Bros.
			Weems Bros.
			Weems Bros.
			Weems Bros.
			Weems Bros.
			Weems Bros.
			Weems Bros.
			Weems Bros.
			Weems Bros.
			Weems Bros.
			Weems Bros.
			Weems Bros.
			Weems Bros.
			Weems Bros Seafood.
			Weems Bros Seafood Co.
			Weiskopf Fisheries LLC.
			Wendy & Eric Inc.
			Wescovich Inc.
			West Point Trawlers Inc.
			Westley J Domangue.
			WH Blanchard Inc.
			Whiskey Joe Inc.
			White and Black.
			White Bird.
			White Foam.
			White Gold.
			Wilcox Shrimping Inc.
			Wild Bill.
			Wild Eagle Inc.
			William E Smith Jr Inc.
			William Lee Inc.
			William O Nelson Jr.
			William Patrick Inc.
			William Smith Jr Inc.
			Willie Joe Inc.
			Wind Song Inc.
			Wonder Woman.
			Woods Fisheries Inc.
			Woody Shrimp Co Inc.
			Yeaman's Inc.
			Yen Ta.
			Yogi's Shrimp.
			You & Me Shrimp.
			Ysclaskey Seafood.
			Zirlott Trawlers Inc.
			Zirlott Trawlers Inc

[FR Doc. 2016–12575 Filed 5–27–16; 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Part 80

Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2016–0004; FRL–9946–90–OAR]

RIN 2060–AS72

Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under section 211 of the Clean Air Act, the Environmental Protection Agency (EPA) is required to set renewable fuel percentage standards every year. This action proposes the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that would apply to all motor vehicle gasoline and diesel produced or imported in the year 2017. The EPA is proposing a cellulosic biofuel volume that is below the applicable volume specified in the Act. Relying on statutory waiver authorities, the EPA is also proposing to reduce the applicable volumes of advanced biofuel and total renewable fuel. The proposed standards are expected to continue driving the market to overcome constraints in renewable fuel distribution infrastructure, which in turn is expected to lead to substantial growth over time in the production and use of renewable fuels. In this action, we are also proposing the applicable volume of biomass-based diesel for 2018.

DATES: Comments must be received on or before July 11, 2016. EPA will announce the public hearing date and location for this proposal in a supplemental **Federal Register** document.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2016–0004, at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4131; email address: *macallister.julia@epa.gov*.

SUPPLEMENTARY INFORMATION: Entities potentially affected by this final rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol, biodiesel, renewable diesel, and biogas. Potentially regulated categories include:

Category	NAICS[1] Codes	SIC[2] Codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	325199	2869	Other basic organic chemical manufacturing.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	221210	4925	Manufactured gas production and distribution.
Industry	454319	5989	Other fuel dealers.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed action. This table lists the types of entities that EPA is now aware could potentially be regulated by this proposed action. Other types of entities not listed in the table could also be regulated. To determine whether your entity would be regulated by this proposed action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this proposed action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Outline of This Preamble

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  3. Biomass-Based Diesel
  4. Cellulosic Biofuel
  5. Annual Percentage Standards
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  F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer and Advancement Act (NTTAA)
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VIII. Statutory Authority

I. Executive Summary

The Renewable Fuel Standard (RFS) program began in 2006 pursuant to the requirements in Clean Air Act (CAA) section 211(o) that were added through the Energy Policy Act of 2005 (EPAct). The statutory requirements for the RFS program were subsequently modified through the Energy Independence and Security Act of 2007 (EISA), resulting in the publication of major revisions to the regulatory requirements on March 26, 2010.[1] EISA's stated goals include moving the United States toward "greater energy independence and security, to increase the production of clean renewable fuels." Today, nearly all of the approximately 142 billion gallons of gasoline used for transportation purposes contains 10 percent ethanol (E10), and a substantial portion of diesel fuel contains biodiesel.

The fundamental objective of the RFS provisions under the CAA is clear: To increase the use of renewable fuels in the U.S. transportation system every year in order to reduce greenhouse gases (GHGs) and increase energy security. Renewable fuels represent an opportunity for the U.S. to move away from fossil fuels towards a set of lower lifecycle GHG transportation fuels, and a chance for a still-developing lower lifecycle GHG technology sector to grow. While renewable fuels include corn starch ethanol, which is the predominant renewable fuel in use to date, Congress envisioned the majority of growth over time to come from advanced biofuels, as the non-advanced (conventional) volumes remain constant in the statutory volume tables starting in 2015 while the advanced volumes continue to grow.[2]

The statute includes annual volume targets, and requires EPA to translate those volume targets (or alternative volume requirements established by EPA in accordance with statutory waiver authorities) into compliance obligations that refiners and importers must meet every year. In this action, we are proposing the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that would apply to all gasoline and diesel produced or imported in 2017. We are also proposing the applicable volume of biomass-based diesel for 2018.

In this action, we are proposing standards that are designed to achieve the Congressional intent of increasing renewable fuel use over time in order to reduce lifecycle GHG emissions of transportation fuels and increase energy security, while at the same time accounting for the real-world challenges that have slowed progress toward such goals. Those challenges have made the volume targets established by Congress for 2017 beyond reach for all but the minimum 1.0 billion gallons for biomass-based diesel (BBD). We are proposing to use the waiver mechanisms provided by Congress to establish volume requirements that would be lower than the statutory targets for fuels other than biomass-based diesel, but set at a level that we believe would spur growth in renewable fuel use, consistent with Congressional intent.

Our proposed 2017 volume requirements are ambitious, with substantial growth in all categories relative to 2016. We are also proposing a volume requirement for BBD for 2018 that would continue the growth in that category of renewable fuel. The proposed volume requirements are shown in Table I–1 below.

TABLE I–1—PROPOSED VOLUME REQUIREMENTS [A]

	2017	2018
Cellulosic biofuel (million gallons)	312	n/a
Biomass-based diesel (billion gallons)	[b] 2.0	2.1
Advanced biofuel (billion gallons)	4.0	n/a
Renewable fuel (billion gallons)	18.8	n/a

[a] All values are ethanol-equivalent on an energy content basis, except for BBD which is biodiesel-equivalent.

[b] The 2017 BBD volume requirement was established in the 2014–2016 final rule (80 FR 77420, December 14, 2015). We are not reproposing or inviting comment on this volume requirement and any such comment we do receive will be considered beyond the scope of this rulemaking.

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[1] 75 FR 14670, March 26, 2010.

[2] In this document we follow the common practice of using the term "conventional" renewable fuel to mean any renewable fuel that is not an advanced biofuel.

Our decision to propose volumes for total renewable fuel that rely on using both the cellulosic waiver authority and the general waiver authority is based on the same fundamental reasoning we relied upon in the final rule "Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017," which established the standards for 2014, 2015, and 2016 (hereinafter referred to as the "2014–2016 final rule").[3] Despite significant increases in renewable fuel use in the United States, real-world constraints, such as the slower than expected development of the cellulosic biofuel industry and constraints in the marketplace needed to supply certain biofuels to consumers, have made the timeline laid out by Congress impossible to achieve. These challenges remain, even as we recognize the success of the RFS program over the past decade in boosting renewable fuel use, and the recent signs of progress towards development of increasing volumes of advanced, low GHG-emitting fuels, including cellulosic biofuels.

We believe that the RFS program can and will drive renewable fuel use, and we have considered the ability of the market to respond to the standards we set when we assessed the amount of renewable fuel that can be supplied. Therefore, while this proposed rule applies the tools Congress provided to make adjustments to the statutory volume targets in recognition of the constraints that exist today, we believe the standards we are proposing will drive growth in renewable fuels, particularly advanced biofuels, which achieve the lowest lifecycle GHG emissions. In our view, while Congress recognized that supply challenges may exist as evidenced by the waiver provisions, it did not intend growth in the renewable fuels market to be stopped by those challenges, including those associated with the "E10 blendwall."[4] The fact that Congress chose to mandate increasing and substantial amounts of renewable fuel clearly signals that it intended the RFS program to create incentives to increase renewable fuel supplies and overcome constraints in the market. The standards we are proposing would provide those incentives.

As for past rulemakings establishing the annual standards under the RFS program, the final standards that we set for 2017 and the final BBD volume requirement for 2018 will take into account comments received in response to this proposal and relevant new or updated information that becomes available prior to the final rule.[5] As a result, the final standards that we set for 2017 and the final BBD volume requirement for 2018 may differ from those we have proposed.

A. Purpose of This Action

The national volume targets of renewable fuel that are intended to be achieved under the RFS program each year (absent an adjustment or waiver by EPA) are specified in CAA section 211(o)(2). The statutory volumes for 2017 are shown in Table I.A–1. The cellulosic biofuel and BBD categories are nested within the advanced biofuel category, which is itself nested within the total renewable fuel category. This means, for example, that each gallon of cellulosic biofuel or BBD that is used to satisfy the individual volume requirements for those fuel types can also be used to satisfy the requirements for advanced biofuel and total renewable fuel.

TABLE I.A–1—APPLICABLE 2017 VOLUMES SPECIFIED IN THE CLEAN AIR ACT

[Billion gallons][a]

Cellulosic biofuel	5.5
Biomass-based diesel	≥1.0
Advanced biofuel	9.0
Renewable fuel	24.0

[a] All values are ethanol-equivalent on an energy content basis, except values for BBD which are given in actual gallons.

Under the RFS program, EPA is required to determine and publish annual percentage standards for each compliance year. The percentage standards are calculated to ensure use in transportation fuel of the national "applicable volumes" of the four types of biofuel (cellulosic biofuel, BBD, advanced biofuel, and total renewable fuel) that are set forth in the statute or established by EPA in accordance with the Act's requirements. The percentage standards are used by obligated parties (generally, producers and importers of gasoline and diesel fuel) to calculate their individual compliance obligations. Each of the four percentage standards is applied to the volume of non-renewable gasoline and diesel that each obligated party produces or imports during the specified calendar year to determine their individual volume obligations with respect to the four renewable fuel types. The individual volume obligations determine the number of RINs of each renewable fuel type that each obligated party must acquire and retire to demonstrate compliance.

EPA is proposing the annual applicable volume requirements for cellulosic biofuel, advanced biofuel, and total renewable fuel for 2017, and for BBD for 2018.[6] Table I.A–2 lists the statutory provisions and associated criteria relevant to determining the national applicable volumes used to set the percentage standards in this proposed rule.

TABLE I.A–2—STATUTORY PROVISIONS FOR DETERMINATION OF APPLICABLE VOLUMES

Applicable volumes	Clean Air Act reference	Criteria provided in statute for determination of applicable volume
Cellulosic biofuel	211(o)(7)(D)(i)	Required volume must be lesser of volume specified in CAA 211(o)(2)(B)(i)(III) or EPA's projected volume.
	211(o)(7)(A)	EPA in consultation with other federal agencies may waive the statutory volume in whole or in part if implementation would severely harm the economy or environment of a State, region, or the United States, or if there is an inadequate domestic supply.
Biomass-based diesel[7]	211(o)(2)(B)(ii) and (v)	Required volume for years after 2012 must be at least 1.0 billion gallons, and must be based on a review of implementation of the program, coordination with other federal agencies, and an analysis of specified factors.

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[3] 80 FR 77420, December 14, 2015.

[4] The "E10 blendwall" represents the volume of ethanol that can be consumed domestically if all gasoline contains 10% ethanol and there are no higher-level ethanol blends consumed such as E15 or E85.

[5] For example, we intend in the final rule to use updated EIA projections of gasoline and diesel fuel consumption, as well as updated information on expected production of cellulosic biofuels.

[6] The 2017 BBD volume requirement was established in the 2014–2016 final rule.

TABLE I.A–2—STATUTORY PROVISIONS FOR DETERMINATION OF APPLICABLE VOLUMES—Continued

Applicable volumes	Clean Air Act reference	Criteria provided in statute for determination of applicable volume
	211(o)(7)(A)	EPA in consultation with other federal agencies may waive the statutory volume in whole or in part if implementation would severely harm the economy or environment of a State, region, or the United States, or if there is an inadequate domestic supply.
Advanced biofuel	211(o)(7)(D)(i)	If applicable volume of cellulosic biofuel is reduced below the statutory volume to the projected volume, EPA may reduce the advanced biofuel and total renewable fuel volumes in CAA 211(o)(2)(B)(i)(I) and (II) by the same or lesser volume. No criteria specified.
	211(o)(7)(A)	EPA in consultation with other federal agencies may waive the statutory volume in whole or in part if implementation would severely harm the economy or environment of a State, region, or the United States, or if there is an inadequate domestic supply.
Total renewable fuel	211(o)(7)(D)(i)	If applicable volume of cellulosic biofuel is reduced below the statutory volume to the projected volume, EPA may reduce the advanced biofuel and total renewable fuel volumes in CAA 211(o)(2)(B)(i)(I) and (II) by the same or lesser volume. No criteria specified.
	211(o)(7)(A)	EPA in consultation with other federal agencies may waive the statutory volume in whole or in part if implementation would severely harm the economy or environment of a State, region, or the United States, or if there is an inadequate domestic supply.

As shown in Table I.A–2, the statutory authorities allowing EPA to modify or set the applicable volumes differ for the four categories of renewable fuel. Under the statute, EPA must annually determine the projected volume of cellulosic biofuel production for the following year. If the projected volume of cellulosic biofuel production is less than the applicable volume specified in section 211(o)(2)(B)(i)(III) of the statute, EPA must lower the applicable volume used to set the annual cellulosic biofuel percentage standard to the projected volume of production during the year. In Section III of this proposed rule, we present our analysis of cellulosic biofuel production and the proposed applicable volume for 2017. This analysis is based on an evaluation of producers' production plans and progress to date following discussions with cellulosic biofuel producers.

With regard to BBD, Congress chose to set aside a portion of the advanced biofuel standard for BBD and CAA section 211(o)(2)(B) specifies the applicable volumes of BBD to be used in the RFS program only through year 2012. For subsequent years the statute sets a minimum volume of 1 billion gallons, and directs EPA, in coordination with the U.S. Departments of Agriculture (USDA) and Energy (DOE), to determine the required volume after review of the renewable fuels program and consideration of a number of factors. The BBD volume requirement must be established 14 months before the year in which it will apply. In the 2014–2016 final rule we established the BBD volume for 2017. In Section IV of this preamble we discuss our proposed assessment of statutory and other relevant factors and our proposed volume requirement for BBD for 2018, which has been developed in coordination with USDA and DOE.[8] We are proposing growth in the required volume of BBD so as to provide continued support to that important contributor to the pool of advanced biofuel while at the same time providing continued incentive for the development of other types of advanced biofuel.

Regarding advanced biofuel and total renewable fuel, Congress provided several mechanisms through which those volumes could be reduced if necessary. If we lower the applicable volume of cellulosic biofuel below the volume specified in CAA 211(o)(2)(B)(i)(III), we also have the authority to reduce the applicable volumes of advanced biofuel and total renewable fuel by the same or a lesser amount. We refer to this as the "cellulosic waiver authority." We may also reduce the applicable volumes of any of the four renewable fuel types using the "general waiver authority" provided in CAA 211(o)(7)(A) if EPA, in consultation with USDA and DOE, finds that implementation of the statutory volumes would severely harm the economy or environment of a State, region, or the United States, or if there is inadequate domestic supply. Section II of this proposed rule describes our use of the cellulosic waiver authority to reduce volumes of advanced biofuel and total renewable fuel and the general waiver authority to further reduce volumes of total renewable fuel. Consistent with the views that we expressed in the 2014–2016 final rule, we continue to believe that the exercise of our waiver authorities is necessary to address important realities, including:

- Substantial limitations in the supply of cellulosic biofuel,
- Insufficient supply of other advanced biofuel to offset the shortfall in cellulosic biofuel, and
- Practical and legal constraints on the ability of the market to supply renewable fuels to the vehicles and engines that can use them.

We believe these realities continue to justify the exercise of the authorities Congress provided us to waive the statutory volumes. At the same time, we are mindful that the primary objective of the statute is to increase renewable fuel use over time. While available volumes of all categories of renewable fuel have been increasing in recent years, the statutory volume targets have been increasing as well. For the total renewable fuel requirement in this rule, we are proposing to use both the cellulosic biofuel and general waiver authorities only to the extent necessary to derive the applicable volume of total renewable fuel that reflects the

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[7] Section 211(o)(7)(E) also authorizes EPA in consultation with other federal agencies to issue a temporary waiver of applicable volumes of BBD where there is a significant feedstock disruption or other market circumstance that would make the price of BBD fuel increase significantly.

[8] The 2017 BBD volume requirement was established in the December 14, 2015 final rule (80 FR 77420).

maximum supply that can reasonably be expected to be produced and consumed by a market that is responsive to the RFS standards (hereafter sometimes referred to as "reasonably achievable supply"). This is a very challenging task not only in light of the myriad of complexities of the fuels market and how individual aspects of the industry might change in the future, but also because we cannot precisely predict how the market will respond to the volume-driving provisions of the RFS program. Thus the determination of the total renewable fuel volume requirement is one that we believe necessarily involves considerable exercise of judgment. However, the circumstances facing us for this proposal are not unlike those we faced in the 2014–2016 final rule, and thus the approach we have taken to determining reasonably achievable supply for 2017 is largely the same as that in the 2014–2016 final rule. Based on our assessment of reasonably achievable supply, we believe that an adjustment to the statutory target for total renewable fuel is warranted for 2017. Nevertheless, as discussed in subsequent sections of this rule, it is our intention that the proposed volume requirements will lead to growth in supply beyond the levels achieved in the past, based in part on the expectation that the market can and will respond to the standards we set.

For the advanced biofuel volume requirements, we are proposing to use the cellulosic waiver authority alone to derive the volume requirement for 2017 that is reasonably attainable and which to a significant extent would result in backfilling the shortfall in cellulosic biofuel volumes with other advanced biofuels that also provide substantial GHG emission reductions.

B. Summary of Major Provisions in This Action

This section briefly summarizes the major provisions of this proposed rule. We are proposing applicable volume requirements and associated percentage standards for cellulosic biofuel, advanced biofuel, and total renewable fuel for 2017, as well as the percentage standard for BBD for 2017, and the applicable volume requirement for BBD for 2018.

1. Proposed Approach to Setting Volume Requirements

It is our intention that the volume requirements and associated percentage standards for 2017 will be issued on the statutory schedule, providing the market with the time allotted by Congress to react to the standards we set. For advanced biofuel and total renewable fuel, our proposed assessment of supply simultaneously reflects the statute's purpose to drive growth in renewable fuels, while also accounting for constraints in the market that make the volume targets specified in the statute beyond reach in the time set forth in the Act, as described more fully in Section II. As described in Section III, the proposed 2017 cellulosic biofuel volume requirement is based on a projection of production that reflects a neutral aim at accuracy. Our proposed determination regarding the 2018 BBD volume requirement reflects an analysis of a set of factors stipulated in CAA 211(o)(2)(B)(ii), as described in more detail in Section IV.

The approach we have taken in this proposal is essentially the same as that presented in the 2014–2016 final rule. We believe that the approach that we took in the 2014–2016 final rule to determining the 2016 volume requirements was successful in targeting levels that took into account constraints in the supply of renewable fuel while simultaneously accounting for the ability of the market to be responsive to the standards we set to overcome some of those constraints. As a result, we believe that it is appropriate to use the same approach in our proposal for the 2017 volume requirements, and the discussion of the derivation of the proposed volume requirements in this proposal makes frequent reference to the 2014–2016 final rule. Where data, analyses, or other information have changed since release of the 2014–2016 final rule, we have noted the impact of such changes on our assessment of achievable volumes for 2017.

2. Advanced Biofuel and Total Renewable Fuel

Since the EISA-amended RFS program began in 2010, we have reduced the applicable volume of cellulosic biofuel each year in the context of our annual RFS standards rulemakings to the projected production levels, and we have considered whether to also reduce the advanced biofuel and total renewable fuel statutory volumes pursuant to the waiver authority in section 211(o)(7)(D)(i). In the 2014–2016 final rule, we determined that the volume of ethanol in the form of E10 or higher ethanol blends such as E15 or E85 that could be supplied to vehicles in 2016, together with the volume of non-ethanol renewable fuels that could be supplied to vehicles, would be insufficient to attain the statutory targets for both total renewable fuel and advanced biofuel. As a result, we used the waiver authorities provided in CAA 211(o)(7)(D) to set lower volume requirements for these renewable fuel categories in 2016, and we also used the waiver authority in CAA 211(o)(7)(A) to provide an additional further increment of reduction for total renewable fuel.

We believe that the conditions compelling us to reduce the applicable 2016 volume requirements for advanced biofuel and total renewable fuel below the statutory targets remain relevant in 2017. Our proposed determination that the required volumes of advanced biofuel and total renewable fuel should be reduced from the statutory targets is based on a consideration of:

- The ability of the market to supply such fuels through domestic production or import.
- The ability of available renewable fuels to be used as transportation fuel, heating oil, or jet fuel.
- The ability of the standards to bring about market changes in the time available.
- The ability of reasonably attainable volumes of non-cellulosic advanced biofuels to backfill for unavailable volumes of cellulosic biofuel.

As described in more detail in Section II.A, we believe that the availability of qualifying renewable fuels and constraints on their supply to vehicles that can use them are valid considerations under both the cellulosic waiver authority under CAA section 211(o)(7)(D)(i) and the general waiver authority under CAA section 211(o)(7)(A). As for 2016, we are proposing to use the waiver authorities in a limited way that reflects our understanding of how to reconcile real marketplace constraints with Congress' intent to spur growth in renewable fuel use over time.

We are proposing applicable volumes for advanced biofuel and total renewable fuel for 2017 that would result in significant volume growth over the volume requirements for 2016. Moreover, the proposed volume requirements for total renewable fuel are, in our judgment, as ambitious as can reasonably be justified, and reflect the growth rates that can be attained under a program explicitly designed to compel the market to respond. We anticipate that the proposed advanced biofuel volume requirement would result in reasonably attainable volumes of advanced biofuel backfilling for missing cellulosic biofuel volumes.

3. Biomass-Based Diesel

In EISA, Congress chose to set aside a portion of the advanced biofuel standard for BBD, but only through 2012. Beyond 2012 Congress stipulated that EPA, in coordination with other agencies, was to establish the BBD volume taking into account the intent of Congress to reduce GHG emissions and increase energy security, along with the history of the program and various specified factors, providing that the required volume for BBD could not be less than 1.0 billion gallons. For 2013, EPA established an applicable volume of 1.28 billion gallons. For 2014 and 2015 we established the BBD volume requirement to reflect the actual volume for each of these years of 1.63 and 1.73 billion gallons.[9] For 2016 and 2017, we set the BBD volumes at 1.9 and 2.0 billion gallons respectively.

Given current and recent market conditions, the advanced biofuel volume requirement is driving the biodiesel and renewable diesel volumes, and we expect this to continue. Nevertheless we believe that it is appropriate to set increasing BBD applicable volumes to provide a floor to support continued investment to enable increased production and use of BBD. In doing so we also believe in the importance of maintaining opportunities for other types of advanced biofuel, such as renewable diesel co-processed with petroleum, renewable gasoline blend stocks, and renewable heating oil, as well as others that are under development.

Thus, based on a review of the implementation of the program to date and all the factors required under the statute, and in coordination with USDA and DOE, we are proposing an increase of 100 million gallons in the applicable volume of BBD, to 2.1 billion gallons for 2018. We believe that this increase will support the overall goals of the program while also maintaining the incentive for development and growth in production of other advanced biofuels. Establishing the volumes at this level will encourage BBD producers to manufacture higher volumes of fuel that will contribute to the advanced biofuel and total renewable fuel requirements, while also leaving considerable opportunity within the advanced biofuel mandate for investment in and growth in production of other types of advanced biofuel with comparable or potentially superior environmental or other attributes.

4. Cellulosic Biofuel

In the past several years the cellulosic biofuel industry has continued to make progress towards significant commercial scale production. Cellulosic biofuel production reached record levels in 2015, driven largely by compressed natural gas (CNG) and liquefied natural gas (LNG) derived from biogas. Cellulosic ethanol, while produced in much smaller quantities than CNG/LNG derived from biogas, was also produced consistently in 2015. In this rule we are proposing a cellulosic biofuel volume requirement of 312 million ethanol-equivalent gallons for 2017 based on the information we have received regarding individual facilities' capacities, production start dates and biofuel production plans, as well as input from other government agencies, and EPA's own engineering judgment.

As part of estimating the volume of cellulosic biofuel that will be made available in the U.S. in 2017, we considered all potential production sources by company and facility. This included sources still in the planning stages, facilities under construction, facilities in the commissioning or start-up phases, and facilities already producing some volume of cellulosic biofuel.[10] From this universe of potential cellulosic biofuel sources, we identified the subset that is expected to produce commercial volumes of qualifying cellulosic biofuel for use as transportation fuel, heating oil, or jet fuel by the end of 2017. To arrive at projected volumes, we collected relevant information on each facility. We then developed projected production ranges based on factors such as the status of the technology being used, progress towards construction and production goals, facility registration status, production volumes achieved, and other significant factors that could potentially impact fuel production or the ability of the produced fuel to qualify for cellulosic biofuel Renewable Identification Numbers (RINs). We also used this information to group these companies based on production history and to select a value within the aggregated projected production ranges that we believe best represents the most likely production volumes from each group for each year. Further discussion of these factors and the way they were used to determine our final cellulosic biofuel projection for 2017 can be found in Section III.

5. Annual Percentage Standards

The renewable fuel standards are expressed as a volume percentage and are used by each producer and importer of fossil-based gasoline or diesel to determine their renewable fuel volume obligations. The percentage standards are set so that if each obligated party meets the standards, and if EIA projections of gasoline and diesel use for the coming year prove to be accurate, then the amount of renewable fuel, cellulosic biofuel, BBD, and advanced biofuel actually used will meet the volume requirements used to derive the percentage standards, required on a nationwide basis.

Four separate percentage standards are required under the RFS program, corresponding to the four separate renewable fuel categories shown in Table I.A–1. The specific formulas we use in calculating the renewable fuel percentage standards are contained in the regulations at 40 CFR 80.1405. The percentage standards represent the ratio of renewable fuel volume to projected non-renewable gasoline and diesel volume. The volume of transportation gasoline and diesel used to calculate the final percentage standards was provided by the Energy Information Administration (EIA). The proposed percentage standards for 2017 are shown in Table I.B.5–1. Detailed calculations can be found in Section V, including the projected gasoline and diesel volumes used.

TABLE I.B.5–1—PROPOSED 2017 PERCENTAGE STANDARDS

Cellulosic biofuel	0.173
Biomass-based diesel	1.67
Advanced biofuel	2.22
Renewable fuel	10.44

C. Outlook for 2018 and Beyond

As in the past, we acknowledge that a number of challenges still need to be overcome in order to fully realize the potential for greater use of renewable fuels in the United States as envisioned by Congress in establishing the RFS requirements. The RFS program plays a central role in creating the incentives for realizing that potential. The standards being proposed reflect our understanding of the significant progress that is being made in overcoming those challenges. We expect future standards to both reflect and anticipate progress of the industry and market in providing for continued expansion in the supply of renewable fuels, and we intend to set standards in future years that continue to capitalize on the market's ability to respond to those standards with expansions in production and infrastructure.

We believe that the supply of renewable fuels can continue to increase in the coming years despite the

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[9] The 2015 BBD standard was based on actual data for the first 9 months of 2015 and on projections for the latter part of the year for which data on actual use was not available.

[10] Facilities primarily focused on research and development (R&D) were not the focus of our assessment, as production from these facilities represents very small volumes of cellulosic biofuel, and these facilities typically have not generated RINs for the fuel they have produced.

constraints associated with production of cellulosic biofuels and other advanced biofuels, and constraints associated with supplying renewable fuels to the vehicles and engines that can use them. We believe that the market is capable of responding to ambitious standards by expanding all segments of the market needed to increase renewable fuel supply and to provide incentives for the production and use of renewable fuels.

In future years, we would expect to use the most up-to-date information available to project the growth that can realistically be achieved considering the ability of the RFS program to spur growth in the volume of ethanol, biodiesel, and other renewable fuels that can be supplied and consumed by vehicles as we have for the 2017 volumes in this proposal. In particular, we will focus on the emergence of advanced biofuels including cellulosic biofuel, consistent with the statute. Many companies are continuing to invest in efforts ranging from research and development, to the construction of commercial-scale facilities to increase the production potential of next generation biofuels. We will continue to evaluate new pathways especially for advanced biofuels and respond to petitions, expanding the availability of feedstocks, production technologies, and fuel types eligible under the RFS program.

In addition to ongoing efforts to evaluate new pathways for advanced biofuel production, we are aware that other actions can also play a role in overcoming challenges that limit the potential for supply of increased volumes of renewable fuels. We are currently considering and evaluating regulatory provisions that should enhance the ability of the market to increase not only the production of advanced and cellulosic biofuels but also the use of higher-level ethanol blends such as E15 and E85. DOE and USDA are continuing to provide funds for the development of new technologies and expansion of infrastructure. All of this, as well as actions not yet defined, is expected to continue to help clear hurdles to support the ongoing growth in the use of renewable fuels in future years.

II. Advanced Biofuel and Total Renewable Fuel Volumes for 2017

The national volume targets of advanced biofuel and total renewable fuel to be used under the RFS program each year through 2022 are specified in CAA section 211(o)(2). Congress set targets that envisioned growth at a pace that far exceeded historical growth and prioritized that growth as occurring principally in advanced biofuels (contrary to historical growth patterns). Congressional intent is evident in the fact that the non-advanced volumes remain at a constant 15 billion gallons in the statutory volume tables starting in 2015 while the advanced volumes continue to grow through 2022 to a total of 21 billion gallons, for a total of 36 billion gallons in 2022.

While Congress set ambitious volume targets as a mechanism to push renewable fuel volume growth under the RFS program, Congress also provided EPA with waiver authority, in part to address the situation where supply of renewable fuel does not match these ambitious target levels. EPA may reduce the volume targets to the extent that we reduce the applicable volume for cellulosic biofuel pursuant to CAA 211(o)(7)(D), or if the criteria are met for use of the general waiver authority under CAA 211(o)(7)(A). As described in this section, we believe that reductions in both the advanced biofuel and total renewable fuel volume targets are necessary for 2017.

While the statute and legislative history offer little guidance on the specific considerations underlying the statutory volume targets, we believe it is highly unlikely that Congress expected those volume targets to be reached only through the consumption of E10 and biomass-based diesel; while the statute does require the use of a minimum volume of BBD, it does not explicitly require the use of ethanol. Today we know that possible approaches to significantly expand renewable fuel use fall into a number of areas, such as:

- Increased use of E15 in model year 2001 and later vehicles,
- Increased use of E85 or other higher level ethanol blends in flex-fuel vehicles (FFVs),
- Increased production and/or importation of non-ethanol biofuels (*e.g.,* biodiesel, renewable diesel, renewable gasoline, and butanol) for use in conventional vehicles and engines,
- Increased use of biogas in CNG vehicles,
- Increased use of renewable jet fuel and heating oil,
- Increased use of cellulosic and other non-food based feedstocks, and
- Co-development of new technology vehicles and engines optimized for new fuels.

While we believe that developments in some of these areas have been and will continue to occur, and that such changes will contribute to growth in supply in 2017, we do not believe that those developments will be sufficient to reach the statutory volume targets in this year. Volume requirements over the longer term that are issued in a timely manner and which provide the certainty of a guaranteed and growing future market are necessary for the industry to have the incentive to invest in the development of new technology and expanded infrastructure for production, distribution, and dispensing capacity. We believe that over time use of both higher level ethanol blends and non-ethanol biofuels can and will increase, consistent with Congressional intent to increase total renewable fuel use through the enactment of EPAct and EISA. As stated above, while Congress provided waiver authority to account for supply and other challenges, we do not believe that Congress intended that the E10 blendwall or any other particular limitation would present a barrier to the expansion of renewable fuels. The fact that Congress set volume targets reflecting increasing and substantial amounts of renewable fuel use clearly signals that it intended the RFS program to create incentives to increase renewable fuel supplies and overcome supply limitations. Notwithstanding these facts, Congress also authorized EPA to adjust statutory volumes as necessary to reflect situations involving shortfalls in cellulosic biofuel production, inadequate domestic supply, or where EPA determines that severe economic or environmental harm would result from program implementation.

We have evaluated the capabilities of the market and have concluded that the volumes for advanced biofuel and total renewable fuel specified in the statute cannot be achieved in 2017. This is due in part to the expected continued shortfall in cellulosic biofuel; production of this fuel type has consistently fallen short of the statutory targets by 95% or more (about 4 billion gallons in 2016), and projected production volumes for 2017, while continuing to grow, are consistent with this trend. In addition, although in earlier years of the RFS program we determined that the available supply of advanced biofuel and other considerations justified our retaining the statutory advanced biofuel and total renewable fuel volumes notwithstanding the shortfall in cellulosic biofuel production, the more recent statutory targets and continued sluggish pace of cellulosic biofuel production precluded such a determination for 2014, 2015, and 2016. We project that the same circumstances will continue in 2017. As a result, we are proposing to exercise the statutory waiver authorities to reduce the applicable volumes of advanced biofuel and total renewable fuel. Nevertheless, while we are proposing to use the waiver authorities available under the law to reduce applicable volumes from the statutory levels, we intend to set the total volume requirement at the maximum reasonably achievable level that will drive significant growth in renewable fuel use beyond what would occur in the absence of such a requirement, as Congress intended. The proposed volume requirements recognize the ability of the market to respond to the standards we set while staying within the limits of feasibility. The net impact of these proposed volume requirements would be that the necessary volumes of both advanced biofuel and conventional (non-advanced) renewable fuel would significantly increase over levels used in the past.

Our analytic approach is to first ascertain the maximum reasonably achievable volumes of all types of renewable fuel. Having done so, we next determine the extent to which a portion of those fuels should be required to be advanced. We then propose to use the cellulosic waiver authority to provide equal reductions in advanced and total renewable fuel volumes, and the general waiver authority to justify the additional incremental reduction in total volumes necessary to alleviate inadequacy of supply of total renewable fuels. Based on this approach, the volumes that we are proposing are shown below.

TABLE II–1—PROPOSED 2017 VOLUME REQUIREMENTS

[Billion gallons]

	Proposed	Statutory
Advanced biofuel	4.0	9.0
Total renewable fuel	18.8	24.0

A. *Statutory Authorities for Reducing Volume Targets*

In CAA 211(o)(2), Congress specified increasing annual volume targets for total renewable fuel, advanced biofuel, and cellulosic biofuel for each year through 2022, and for biomass-based diesel through 2012, and authorized EPA to set volume requirements for subsequent years in coordination with USDA and DOE, and after consideration of specified factors. However, Congress also recognized that circumstances may arise that necessitate deviation from the statutory volumes and thus provided waiver provisions in CAA 211(o)(7). We believe, as we did in setting the volumes from 2014–2016, that the circumstances justifying use of the waiver authorities and thus a reduction in statutory volumes are currently present, and we are proposing to again use our waiver authorities under both 211(o)(7)(D) and 211(o)(7)(A) to reduce volume requirements. Congress envisioned that there would be 5.5 billion gallons of cellulosic biofuel in 2017, while we estimate the potential for 312 million gallons. Under 211(o)(7)(D), EPA must lower the required cellulosic volume to the projected production volumes. Doing so also provides EPA with authority to lower advanced and total renewable fuel volumes by the same or a lesser amount. Additionally, we believe that even after reducing total renewable fuel volumes to the full extent possible under the cellulosic waiver authority in 211(o)(7)(D), there is an inadequate domestic supply of renewable fuel to achieve those volumes, both warranting and justifying a further reduction in the total renewable fuel volumes under the authority of 211(o)(7)(A). The inadequate domestic supply is due to a combination of projected limitations in the production and importation of qualifying renewable fuels, as well as factors limiting supplying those fuels to the vehicles that can consume them.

1. Cellulosic Waiver Authority

Section 211(o)(7)(D) of the CAA provides that if the projected volume of cellulosic biofuel production is less than the minimum applicable volume in the statute, EPA shall reduce the applicable volume of cellulosic biofuel required to the projected volume available. For 2017, we are proposing to reduce the applicable volume of cellulosic biofuel under this authority.

Section 211(o)(7)(D) also provides EPA with the authority to reduce the applicable volume of total renewable fuel and advanced biofuel in years where it reduces the applicable volume of cellulosic biofuel. The reduction must be less than or equal to the reduction in cellulosic biofuel. For 2017, we are also proposing to reduce applicable volumes of advanced biofuel and total renewable fuel under this authority.

The cellulosic waiver authority is discussed in detail in the preamble to the 2014–2016 final rule. See also, *API* v. *EPA,* 706 F.3d 474 (D.C. Cir. 2013) (requiring that EPA's cellulosic biofuel projections reflect a neutral aim at accuracy); *Monroe Energy* v. *EPA,* 750 F.3d 909 (D.C. Cir. 2014) (affirming EPA's broad discretion under the cellulosic waiver authority to reduce volumes of advanced biofuel and total renewable fuel).

2. General Waiver Authority

Section 211(o)(7)(A) of the CAA provides that EPA, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the applicable volumes of total renewable fuel, after public notice and comment based on a determination that there is an inadequate domestic supply. In addition to proposing to use the cellulosic waiver authority to lower total renewable fuel volumes, we are also proposing to further reduce total renewable fuel volumes for 2017 using the general waiver authority.

EPA interpreted and applied this waiver provision in the 2014–2016 final rule, and concluded that it was appropriate to use this authority in combination with the cellulosic waiver authority to reduce total renewable volumes for those years. EPA, in consultation with DOE and USDA, continues to find that the circumstances justifying the use of the general waiver authority exist and support a finding of inadequate domestic supply. As discussed in the 2014–2016 final rule, we find that this undefined provision is reasonably and best interpreted to encompass the full range of constraints that could result in an inadequate supply of renewable fuel to the ultimate consumers, including fuel production, infrastructure and other constraints. This includes, for example, factors affecting the ability to produce or import biofuels as well as factors affecting the ability to distribute, blend, dispense, and consume those renewable fuels as transportation fuel, jet fuel or heating oil.

A full discussion of EPA's interpretation of this waiver authority can be found in the 2014–2016 final rule. A full discussion of EPA's proposed determination that there is an "inadequate domestic supply" of total renewable fuel in 2017 can be found in Section II.B below.

3. Combining Authorities for Reductions in Total Renewable Fuel

We are again proposing to reduce the applicable volumes of total renewable fuel for 2017 using two distinct authorities. Proposed initial reductions in total renewable fuel correspond to the volume reduction in advanced biofuels, using the cellulosic waiver authority. We are proposing to reduce total renewable fuel further based on a determination of inadequate domestic supply. We are proposing to use the cellulosic waiver authority to reduce the statutory volume for total renewable fuel by an initial increment of 5.0 billion gallons for 2017. In addition, we are proposing to use the general waiver authority exclusively as the basis for further reducing the applicable volume of total renewable fuel by an additional 0.2 billion gallons in 2017.

B. Proposed Determination of Inadequate Domestic Supply

In order to use the general waiver authority in CAA 211(o)(7)(A) to reduce the applicable volumes of total renewable fuel, we must make a determination that there is either "inadequate domestic supply" or that implementation of the statutory volumes would severely harm the economy or environment of a State, a region or the United States. This section summarizes our proposed determination that there will be an inadequate domestic supply of total renewable fuel in 2017, and thus that the statutory volume targets are not achievable with volumes that can reasonably be supplied in this year. Additionally, this proposed determination that the statutory volume targets are not achievable with volumes supplied would also support our use of the cellulosic waiver authority under CAA 211(o)(7)(D) to reduce the applicable volumes of advanced and total renewable fuel.

The statute sets a target of 24.0 billion gallons of total renewable fuel for 2017. We believe that this volume cannot be achieved under even the most optimistic assumptions given current and near-future circumstances. To make this proposed determination, we began by assuming that every gallon of gasoline would contain 10% ethanol, and that the supply of conventional and advanced biodiesel and renewable diesel volumes would be equal to those supplied in 2015. These volumes are clearly attainable, based on readily available information and analysis. However, when these supplies of renewable fuel are taken into account, a significant additional volume of renewable fuel would be needed to meet the statutory volume target.

TABLE II.B–1—ADDITIONAL VOLUMES NEEDED TO MEET THE STATUTORY TARGET FOR TOTAL RENEWABLE FUEL IN 2017

[Million ethanol-equivalent gallons]

Statutory target for total renewable fuel	24,000
Maximum ethanol consumption as E10 [a]	−14,205
Historical maximum supply of biodiesel and renewable diesel [b]	−2,930
Additional volumes needed	6,865

[a] Derived from projected gasoline energy demand from EIA's Short-Term Energy Outlook (STEO) from April, 2016. We intend to use updated EIA information for the final rule.

[b] Represents the 1.90 billion gallons of biodiesel and renewable diesel supplied in 2015.

Based on the current and near-future capabilities of the industry, we expect that only a relatively small portion of the additional volumes needed would come from non-ethanol cellulosic biofuel, non-ethanol advanced biofuels other than BBD, and non-ethanol conventional renewable fuels other than biodiesel and renewable diesel. In 2015, the total ethanol-equivalent volume for all of these sources was 163 million gallons, and we projected that 235 million gallons would be available in 2016 in our 2014–2016 final rule. In 2017 we believe that these sources could be 300 million gallons or more based on the expectation that the growth which is expected to occur between 2015 and 2016 will continue in 2017. Taking these sources into account, we estimate that the volume of additional renewable fuel needed in 2017 would be about 6,600 million gallons.

Aside from these relatively small sources, renewable fuel that could fulfill the need for the additional volumes needed to reach the statutory targets in 2017 would be additional ethanol in the form of E15 or E85, additional biodiesel and renewable diesel, or some combination of these sources. Table II.B–2 provides examples of the additional volumes that would be needed if the 2017 statutory target for total renewable fuel were not waived.

TABLE II.B–2—EXAMPLES OF FUEL TYPES NEEDED TO MEET THE STATUTORY TARGETS FOR TOTAL RENEWABLE FUEL IN 2017

[Million physical gallons of fuel unless otherwise noted]

Additional volumes needed (ethanol-equivalent)	6,600
Meeting the need for additional volumes using only E15	127,790
Meeting the need for additional volumes using only E85 [a]	9,980
Meeting the need for additional volumes using only biodiesel [b]	4,400
Meeting the need for additional volumes using a combination of E15, E85, and biodiesel:	
E15	2,980
E85	2,980
Biodiesel	2,980

[a] Although E85 is assumed to contain 74% ethanol, the use of E85 also displaces some E10. Thus every gallon of ethanol use in excess of the E10 blendwall requires 1.51 gallons of E85.

[b] Each gallon of biodiesel represents 1.5 gallons of renewable fuel in the context of fulfilling the total renewable fuel volume requirement.

Although a combination of E15, E85, and biodiesel would in theory reduce the overall burden on the market to supply the additional volumes needed, the necessary volumes would nevertheless still be far beyond reach. E85 volumes in 2014 only reached about 150 million gallons, and in 2015 we estimate that it rose to about 166 million gallons.[11] [12] In deriving the 2016 volume requirements we estimated that E85 volumes would increase to 200 million gallons, though we also said that 400 million gallons was possible under highly favorable though unlikely conditions. More importantly, our assessment of the potential for growth in E85 that we discussed in the 2014–2016 final rule has changed little in the months since. While growth in E85 supply most certainly can increase in 2017, and programs such as USDA's Biofuel Infrastructure Partnership (BIP) can assist in this effort, there continue to be constraints associated with the weak response of flexible fuel vehicle (FFV) owners to E85 price reductions in comparison to E10 and the failure of RIN prices to be fully passed through to retail fuel prices. As a result, we do not believe that an E85 supply expansion to 2.98 billion gallons can occur in 2017.

Similarly, we do not believe that 2.98 billion gallons of E15 can be supplied in 2017. We projected that 320 million gallons of E15 could be supplied in 2016 based on new infrastructure paid for through USDA's BIP program, and this volume could double in 2017 after the BIP program is fully phased in. As described more fully in Section II.E below, under favorable conditions E15 volumes as high as 800 million gallons might be possible in 2017. However, achieving nearly 3 billion gallons of E15 would require significantly higher growth rates in the number of retail stations offering E15, and/or significantly more favorable pricing for E15 compared to E10. We have seen no evidence that the market is capable of such dramatic changes between today and the end of 2017.

Finally, the necessary volume of advanced and conventional biodiesel that would be needed to avoid a waiver of the statutory target for total renewable fuel, even if combined with substantial increases in E15 and E85 use, is also beyond reach in 2017. For instance, the 2.98 billion gallons of biodiesel shown in Table II.B–2 would be in addition to the 1.9 billion gallons already assumed in Table II.B–1, such that the total volume of conventional and advanced biodiesel needed would be about 5 billion gallons. A total of 5 billion gallons is far higher than the production capacity of all domestic biodiesel facilities, even if accounting for those facilities that are not currently registered under the RFS program. Imports of biodiesel and renewable diesel have historically been much lower than domestic production, reaching a maximum of 470 million gallons in 2015, and thus could not reasonably be expected to fill the gap left by the shortfall in domestic production capacity. The use of 5 billion gallons of biodiesel, equivalent to about 10% of the nationwide diesel pool, would also be constrained by distribution, blending, and dispensing infrastructure. Not only are some areas of the country beyond reasonable reach of biodiesel supply centers, as described in Section III.E.3.iv, but some retailers reduce or modify offerings of biodiesel blends in winter months to account for the higher propensity of biodiesel blends to gel in colder temperatures. Also, a significant portion of the in-use fleet is made up of highway and nonroad diesel engines that are warranted for no more than 5% biodiesel. These considerations are similar to those referenced in the 2014–2016 final rule since little has changed in the months since that could significantly change the potential supply in 2017. In the 2014–2016 final rule, we projected that total biodiesel and renewable diesel volumes could reach 2.5 billion gallons in 2016, which was a significant increase from the 2015 actual supply of 1.9 billion gallons. Even under the most optimistic circumstances, total biodiesel and renewable diesel supply cannot double within one year.

We are also proposing to use the cellulosic waiver authority to reduce volumes of advanced biofuel. Our proposed action is based in part on a determination that the statutory volume targets for advanced biofuel cannot be met in 2017. To make this proposed determination, we took a similar approach to that used for total renewable fuel in Table II.B–1: We first accounted for our proposed volume requirements for cellulosic biofuel and BBD, as well as an estimate of the volume of other non-ethanol advanced biofuel that may be possible in 2017 based on supply in previous years to yield an estimate of readily available volumes. When these supplies of advanced biofuel are taken into account, a significant additional volume of advanced biofuel would still be needed for the statutory volume targets to be met.[13]

TABLE II.B–3—ADDITIONAL VOLUMES NEEDED TO MEET STATUTORY TARGETS FOR ADVANCED BIOFUEL IN 2017

[Million ethanol-equivalent gallons]

Statutory target for advanced biofuel	9,000
Proposed requirement for cellulosic biofuel	312
Biomass-based diesel	[a] 3,000
Potential other non-ethanol advanced	[b] 50
Additional volumes needed	5,638

[a] Represents 2.0 billion gal of BBD that was established in the 2014–2016 final rule. Each gallon of biodiesel generates 1.5 RINs.

[b] Supply of non-ethanol advanced biofuel other than BBD and cellulosic biofuel was 53 million gal in 2014 and 33 million gal in 2015. Given the variability in this source over these two years, we have rounded to 50 mill gal for this assessment.

Based on historic patterns and our understanding of production capacity and feedstock availability, we believe that advanced biofuel that could fulfill the need for the additional volumes needed to reach the statutory target in 2017 would primarily be imported sugarcane ethanol or BBD in excess of the BBD standard. Table II.B–4 provides examples of the additional volumes that would be needed.

TABLE II.B–4—EXAMPLES OF FUEL TYPES NEEDED TO MEET THE STATUTORY TARGETS FOR ADVANCED BIOFUEL IN 2017

[Million physical gallons unless otherwise noted]

Additional volumes needed (ethanol-equivalent)	5,638
Meeting the need for additional volumes using only imported sugarcane ethanol	5,638
Meeting the need for additional volumes using only BBD [a]	3,759

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[11] "Estimating E85 Consumption in 2013 and 2014," Dallas Burkholder, Office of Transportation and Air Quality, US EPA. November 2015. EPA Docket EPA–HQ–OAR–2015–0111.

[12] "Preliminary estimate of E85 consumption in 2015," David Korotney, Office of Transportation and Air Quality, US EPA. April 2016. EPA Docket EPA–HQ–OAR–2016–0004.

[13] The vast majority of these additional volumes needed are due to a shortfall in cellulosic biofuel in comparison to the statutory target of 5.5 billion gallons for 2017.

TABLE II.B–4—EXAMPLES OF FUEL TYPES NEEDED TO MEET THE STATUTORY TARGETS FOR ADVANCED BIOFUEL IN 2017—Continued

[Million physical gallons unless otherwise noted]

Meeting the need for additional volumes using a combination of imported sugarcane ethanol and BBD:	
Sugarcane ethanol	2,255
BBD	2,255

[a] Assumed to be biodiesel. Each gallon of biodiesel represents 1.5 gallons of renewable fuel in the context of fulfilling the advanced biofuel volume requirement.

Even if the additional volumes of advanced biofuel needed to avoid a waiver were shared between imported sugarcane ethanol and BBD, the necessary volumes of both would be far in excess of what we believe is reasonably achievable. For instance, imports of sugarcane ethanol have been highly variable in the past, and the highest volume of sugarcane ethanol that has ever been imported to the U.S. was 680 million gallons in 2006. Moreover, notwithstanding an estimate of 2 billion gallons of sugarcane ethanol supply from the Brazilian Sugarcane Industry Association (UNICA) submitted in response to the June 10, 2015 proposal for the 2016 standards, we do not believe that 2.26 billion gallons could be exported from Brazil to the U.S. in 2017. The 2016 standards that we established in the 2014–2016 final rule were based in part on a projection of 200 million gallons of imported sugarcane ethanol. Our current views of the potential supply of imported sugarcane ethanol for 2017 are largely the same as those discussed in the 2014–2016 final rule, and we refer readers to that rule for further discussion.[14]

Under a scenario wherein growth in sugarcane ethanol and BBD both contributed to providing the additional volumes needed to avoid a waiver of the advanced biofuel statutory target, the total volume of BBD required under the RFS program would also be far in excess of what is achievable in 2017. For instance, the 2.26 billion gallons of BBD shown in Table II.B–4 above would be in addition to the 2.0 billion gallon volume requirement for BBD, such that the total volume of BBD needed would be 4.26 billion gallons. For many of the same reasons discussed above in the context of the inability to meet the statutory targets for total renewable fuel, this level of BBD is not achievable in 2017.

In the 2014–2016 final rule, we discussed the fact that the market is not unlimited in its ability to respond to the standards EPA sets. We continue to believe that setting the volume requirements at the statutory targets would not compel the market to respond with sufficient changes in production levels, infrastructure, and fuel pricing at retail to result in the statutory volumes actually being consumed in 2017, but would instead lead to a complete draw-down in the bank of carryover RINs (which, as discussed in Section II.C, we do not believe to be in the best interest of the program), noncompliance, and/or additional petitions for a waiver of the standards.

C. Total Renewable Fuel Volume Requirement

We are proposing to exercise our authority to waive the volume of total renewable fuel under the general waiver authority for 2017, since reductions using the cellulosic authority alone would be insufficient to alleviate the inadequacy in supply. Our objective is to exercise the general waiver authority only to the extent necessary to address the inadequacy in supply. We are seeking to determine the "maximum" volumes of renewable fuel that are reasonably achievable in light of supply constraints. To clarify, we are not aiming to identify the absolute maximum domestic supply that could be available in an ideal or unrealistic situation, or a level that might be anticipated under conditions that are possible, but unlikely to occur. Rather, we are attempting to identify what we believe is the most likely maximum volume that can be made available under real world conditions, taking into account the ability of the standards we set to cause a market response and result in increases in the supply of renewable fuels. This is a very challenging task not only in light of the myriad complexities of the fuels market and how individual aspects of the industry might change in the future, but also because we cannot precisely predict how the market will respond to the volume-driving provisions of the RFS program. Thus, although the determination is founded on our analyses and evaluation of the available information, the determination is also one that we believe is not given to precise measurement and necessarily involves considerable exercise of judgment.

Our intention for 2017 is to establish a requirement for total renewable fuel that takes into account the ability of the market to respond to the standards we set, and is the maximum that is reasonably achievable given the various constraints on supply. In this context, we continue to believe that the constraints associated with the E10 blendwall do not represent a firm barrier that cannot or should not be crossed. Rather, the E10 blendwall marks the transition from relatively straightforward and easily achievable increases in ethanol consumption as E10 to those increases in ethanol consumption as E15 and E85 that are more challenging to achieve. To date we have seen no compelling evidence that the nationwide average ethanol concentration in gasoline cannot exceed 10.0%.

However, we also recognize that the market is not unlimited in its ability to respond to the standards we set. This is true both for expanded use of ethanol and for non-ethanol renewable fuels. The fuels marketplace in the United States is large, diverse, and complex, made up of many different players with different, and often competing, interests. Substantial growth in the renewable fuel volumes beyond current levels will require action by many different parts of the fuel market, and a constraint in any one part of the market can limit the growth in renewable fuel supply. Whether the primary constraint is in the technology development and commercialization stages, as has been the case with cellulosic biofuels, or is instead related to the development of distribution infrastructure, as is recently the case with ethanol and biodiesel in the United States, the end result is that these constraints limit the growth rate in the available supply of renewable fuel as transportation fuel, heating oil, or jet fuel. These constraints were discussed in detail in the 2014–2016 final rule, and we believe that the same constraints will operate to limit supply for 2017 as well.[15] Other factors outside the purview of the RFS program also impact the supply of renewable fuel, including the price of crude oil and global supply and demand of both renewable fuels and their feedstocks. These factors add uncertainty to the task of estimating volumes of renewable fuel that can be supplied in the future.

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[14] See 80 FR 77476.

[15] See 80 FR 77450.

While the constraints are real and must be taken into account when we determine maximum reasonably achievable volumes of total renewable fuel for 2017, none of those constraints represent insurmountable barriers to growth. Rather, they are challenges that can be overcome in a responsive marketplace given enough time and with appropriate investment. The speed with which the market can overcome these constraints is a function of whether and how effectively parties involved in the many diverse aspects of renewable fuel supply respond to the challenges associated with transitioning from fossil-based fuels to renewable fuels, the incentives provided by the RFS program, and other programs designed to incentivize renewable fuel use. As discussed in the following sections, we believe that the total renewable fuel volume requirements that we are proposing for 2017 reflect the extent to which market participants can reasonably be expected to respond within the time period in question to increase renewable fuel supplies.

Consistent with our approach in the 2014–2016 final rule, we have also considered the availability of carryover RINs in our proposed decision to exercise our waiver authorities in setting the volume requirements for 2017. Other than requiring a credit program, neither the statute nor EPA regulations specify how or whether EPA should consider the availability of carryover RINs in exercising its waiver authorities either in the standard-setting context or in response to petitions for a waiver during a compliance year. The availability of carryover RINs is important both to individual compliance flexibility and operability of the program as whole. We believe that carryover RINs are extremely important in providing obligated parties compliance flexibility in the face of substantial uncertainties in the transportation fuel marketplace, and in providing a liquid and well-functioning RIN market upon which success of the entire program depends. As described in the 2007 rulemaking establishing the RFS regulatory program,[16] and further reiterated in the 2014–2016 final rule,[17] carryover RINs are intended to provide flexibility in the face of a variety of circumstances that could limit the availability of RINs, including weather-related damage to renewable fuel feedstocks and other circumstances affecting the supply of renewable fuel that is needed to meet the standards.

At the time of the 2014–2016 final rule, we estimated that there were at most 1.74 billion carryover RINs available and decided that carryover RINs should not be counted on to avoid or minimize the need to reduce the 2014, 2015, and 2016 statutory volume targets. We also stated that we may or may not take a similar approach in future years, and that we would evaluate the issue on a case-by-case basis considering the facts present in future years. Since that time, obligated parties have submitted their compliance demonstrations for the 2013 compliance year and we now estimate that there are now at most 1.72 billion carryover RINs available, a decrease of 20 million RINs from the previous estimate of 1.74 billion carryover RINs. Since we established the 2014 and the 2015 RFS volume standards at essentially the same level of renewable fuel supplied for those years, we do not expect there to be an appreciable change in the number of available carryover RINs after compliance demonstrations are made for the 2014 and 2015 compliance years.[18]

For 2016, we established standards that represented a significant increase in the renewable fuel volume targets from 2014 and 2015. In the 2014–2016 final rule, we stated that these standards may result in a drawdown in the carryover RIN bank, although an intentional drawdown was not assumed in setting the volume standards. However, we will likely not have data showing whether or not there has been an appreciable change in the size of the bank of carryover RINs until after the 2017 RFS standards have been established.[19] Therefore, there is considerable uncertainty regarding the total number of carryover RINs that may be available for compliance with the 2017 standards. Given this uncertainty, we believe that it would be prudent, and would advance the long-term objectives of the CAA, not to propose standards for 2017 so as to intentionally draw down the current bank of carryover RINs. Assuming the bank of carryover RINs either remains constant after 2016 compliance demonstrations are made or is reduced, we believe that the availability of the full volume of those carryover RINs will be important for both obligated parties and the efficient functioning of the RFS program itself in addressing significant future uncertainties and challenges, particularly since we would expect compliance with the proposed advanced and total renewable fuel standards to require significant progress in growing and sustaining increased production and use of renewable fuels. We believe it is highly unlikely that the bank of carryover RINs will be larger after 2016 compliance demonstrations are made; however, if this is the case, we will take that fact into consideration in setting future standards.

For the reasons noted above, and consistent with the approach we took in the 2014–2016 final rule, we believe that the collective bank of carryover RINs that we anticipate will be available in 2017 should be retained, and not intentionally drawn down, to provide an important and necessary programmatic buffer that will both facilitate individual compliance and provide for smooth overall functioning of the program. Therefore, we are not proposing to set renewable fuel volume requirements at levels that would envision the drawdown in the bank of carryover RINs.

1. Ethanol

Ethanol is the most widely produced and consumed biofuel, both domestically and globally. Since the beginning of the RFS program, the total volume of renewable fuel produced and consumed in the United States has grown substantially each year, primarily due to the increased production and use of corn ethanol. However, the rate of growth in the supply of ethanol has decreased in recent years as the gasoline market has become saturated with E10, and efforts to expand the use of higher ethanol blends such as E15 and E85 have not been sufficient to maintain past growth rates in total ethanol supply. The low number of retail stations selling these higher-level ethanol blends, along with poor price advantages compared to E10, a limited number of FFVs, and limited marketing of these fuels, among others, represent challenges to the continued growth of the supply of ethanol as a transportation fuel in the United States.

In the 2014–2016 final rule we discussed in detail the factors that constrain growth in ethanol supply and the opportunities that exist for pushing the market to overcome those constraints.[20] That discussion generally remains relevant for 2017, though we believe that the supply of ethanol can be somewhat higher in 2017 than it is expected to be in 2016.

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[16] 72 FR 23900, May 1, 2007.

[17] See 80 FR 77482–77487.

[18] The compliance demonstration deadlines for the 2014 and 2015 RFS standards are August 1, 2016, and December 1, 2016, respectively.

[19] The compliance demonstration date for the 2016 RFS standards is March 31, 2017, while the statutory deadline for establishing the 2017 RFS standards is November 30, 2016.

Ethanol supply is not currently limited by production and import capacity, which is in excess of 15 billion gallons. Instead, the amount of ethanol supplied is constrained by the following:

- Overall gasoline demand and the volume of ethanol that can be blended into gasoline as E10 (the so-called E10 blendwall).
- The number of retail stations that offer higher ethanol blends such as E15 and E85.
- The number of vehicles that can both legally and practically consume E15 and/or E85.
- Relative pricing of E15 and E85 versus E10 and the ability of RINs to affect this relative pricing.
- The demand for gasoline without ethanol (E0).

The applicable standards that we set under the RFS program provide incentives for the market to overcome many of these ethanol-related constraints. While the RFS program is unlikely to have a direct effect on overall gasoline demand or the number of vehicles designed to use higher ethanol blends, it can provide incentives for changes in the number of retail stations that offer higher ethanol blends and the relative pricing of those higher ethanol blends in comparison to E10. The RFS program complements other efforts to increase the use of renewable fuels, such as USDA's Biofuel Infrastructure Partnership (BIP) program which has provided $100 million in grants for the expansion of renewable fuel infrastructure in 2016 (supported by additional State matching funds), and their Biorefinery Assistance Program which has provided loan guarantees for the development and construction of commercial-scale biorefineries with a number of the new projects focused on producing fuels other than ethanol.

However, as described in detail in the 2014–2016 final rule, the RFS program is not unlimited in its ability to compel changes in the market to accommodate greater supply of ethanol. For instance, while we do believe that the number of retail stations offering E85 will expand under the influence of the RFS program, an examination of efforts to expand E85 offerings at retail in the past suggests that there are limits in how quickly this can occur even under the most favorable market conditions. While the average rate of expansion has recently been about 120 new E85 stations per year, the growth in E85 stations was more substantial in late 2010 and early 2011—equivalent to about 400 new stations per year. The more recent experience in particular suggests that the growth in 2017 is unlikely to exceed several hundred additional stations each year.[21] [22] Similarly, RIN prices can continue to provide additional subsidies that help to reduce the price of E85 relative to E10 at retail, but the propensity for retail station owners and wholesalers to retain a substantial portion of the RIN value substantially reduces the effectiveness of this aspect of the RIN mechanism.[23] Finally, in the 2014–2016 final rule we based the 2016 volume requirements in part on the expectation that the RFS program would compel all but a tiny portion—estimated at 200 million gallons—of gasoline to contain ethanol. At this time we do not believe that the RFS program would provide incentives for this pool of E0 to shrink further, as the demand for E0 by recreational marine engine owners is often driven by concerns about potential water contamination when E10 is used. (For further discussion of how the Agency arrived at 200 mill gal E0, see 80 FR 77464. We will continue to investigate available sources to determine volumes of E0 in the gasoline market both historically and projected out into the future for establishing the standards under the RFS program, and we request comment on forecasting future volumes of E0.)

We have also found that greater E85 price discounts relative to gasoline have not been associated with the substantial increases in E85 sales volumes that some stakeholders believe have occurred, or could occur in the near future. Based on an analysis of E85 consumption in five states (including the frequently cited E85 consumption data from Minnesota) and the E85 price reductions relative to gasoline in those states, we estimate that increasing the national average E85 price reduction relative to E10 from 17.5% to 30% would have increased total 2014 E85 consumption from 150 million gallons to only 200 million gallons.[24] Importantly, an increase in the nationwide average E85 price reduction to 30% would be unprecedented. A paper published by Babcock and Pouliot estimated sales volumes of a similar magnitude for these price reductions, projecting that consumers would consume about 250 million gallons of E85 if it was priced at parity on a cost-per-mile basis with E10 (approximately 22% lower on a price-per gallon basis).[25] Based on our analysis of consumer response to E85 prices, as supported by the Babcock and Pouliot analysis, it would be inappropriate to estimate total potential E85 consumption based on the consumption capacity of all FFVs, or even just those FFVs with reasonable access to E85. It would be similarly inappropriate to assume that the E85 throughput at a given retail station could be the same as typical throughput rates for E10. Such estimates demonstrate what is physically possible, not what is likely to occur given the way that the market actually operates under the influence of high RIN prices.

Another significant factor in estimating the total volume of ethanol that can be supplied is the E10 blendwall, which is in turn a function of total gasoline demand. While the E10 blendwall does not represent a barrier to increasing ethanol supply, it does mark the point at which additional ethanol supply becomes more challenging to achieve. As the pool-wide ethanol concentration increases from 10% to higher levels of ethanol, the market transitions from mild resistance to obstacles that are more difficult to overcome, particularly with regard to infrastructure and relative pricing for higher ethanol blends such as E15 and E85. Because of this dynamic, it is helpful to identify the total volume of ethanol that could be supplied if all gasoline was E10 and there were no higher ethanol blends.

Based on the April 2016 Short-Term Energy Outlook (STEO) from the Energy Information Administration, total demand for gasoline energy in 2017 is projected to be 17.10 quadrillion Btu.[26] If all of this gasoline energy was consumed as E10, the total volume of gasoline would be 142.0 billion gallons, and the corresponding volume of ethanol consumed would be 14.2 billion gallons. If we took into account the small volume of E0 that we believe would continue to be supplied for use in recreational marine engines as discussed in the 2014–2016 final rule, the total volume of ethanol used as E10 would be slightly smaller at 14.18 billion gallons. By comparison, the ethanol volume we estimated in the 2014–2016 final rule to be associated with the E10 blendwall in 2016 was 14.0 billion gallons.[27]

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[20] 80 FR 77456–77465.

[21] The impacts of the USDA BIP program were taken into consideration in the 2014–2016 final rule. This program will phase-in expanded retail offerings for E15 and E85 throughout 2016, and is expected to be fully phased-in by 2017.

[22] See discussion at 80 FR 77460.

[23] See discussion at 80 FR 77458.

[24] "Correlating E85 consumption volumes with E85 price," memorandum from David Korotney to docket EPA–HQ–OAR–2015–0111.

[25] Babcock, Bruce and Sebastien Pouliot. *How Much Ethanol Can Be Consumed in E85?* Card Policy Briefs, September 2015. 15–BP 54. 200 and 250 mill gal of E85 are of similar magnitude when compared to the many billions of gallons of E85 that some parties have said is possible.

[26] Derived from Table 4a of the STEO, converting consumed gasoline and ethanol projected volumes into energy using conversion factors supplied by EIA. *http://www.eia.gov/forecasts/steo/archives/apr16.pdf*. Excludes gasoline consumption in Alaska. For further details, see "Calculation of proposed % standards for 2017" in docket EPA–HQ–OAR–2016–0004.

It is difficult to identify the precise boundary between ethanol supply volumes that can be realistically achieved in 2017 and those that likely cannot realistically be achieved in that timeframe. Nevertheless, we believe that ongoing efforts to increase the availability of E15 and E85 at retail will create opportunities for greater supply of ethanol in 2017 in comparison to 2016.

In the 2014–2016 final rule, we projected that ethanol supply in 2016 could exceed that supplied in 2015 by about 170 million gallons based on changes in gasoline demand, the influence of programs such as USDA's BIP program, and our expectation for how the RFS standards we set would influence sales of E0, E15, and E85 between the two years. For 2017, we believe that slightly larger increases in ethanol supply are possible. For the purpose of assessing the supply of total renewable fuel to require in 2017, we are proposing to use an ethanol supply of 14.4 billion gallons for 2017. While the market will ultimately determine the extent to which compliance with the annual standards is achieved through the use of greater volumes of ethanol versus other, non-ethanol renewable fuels, we nevertheless believe that this ethanol volume represents a realistically achievable level that takes into account the ability of the market to respond to the standards we set. We request comment on whether 14.4 billion gallons of ethanol is an appropriate volume to use in the determination of the applicable total renewable fuel volume requirement for 2017. For the final rule, we will consider comments received in response to this proposal, additional data and information that has become available, and more up-to-date projections of gasoline demand in estimating the total volume of ethanol that can be supplied.

2. Biodiesel and Renewable Diesel

While the market constraints on ethanol supply are readily identifiable as being primarily in the areas of refueling infrastructure and ethanol consumption, it is more difficult to identify and assess the market components that may limit potential growth in the use of biodiesel in 2017. Nevertheless, as discussed in the final rule establishing the RFS standards for 2014–2016, there are several factors that may, to varying degrees and at different times limit the growth of biodiesel and renewable diesel in future years, including local feedstock availability, production and import capacity, and the capacity to distribute, sell, and consume increasing volumes of biodiesel and renewable diesel. We continue to believe that the supply of biodiesel and renewable diesel as transportation fuel in the United States, while growing, is not without limit in the near term.

In the 2014–2016 rule we discussed the current status of each of the factors that impacts the supply of biodiesel and renewable diesel used as transportation fuel in the United States. While the market for biodiesel and renewable diesel has continued to develop, little has changed that would significantly impact our assessment of these factors. Instead, we expect that the growth in the supply of biodiesel and renewable diesel will largely be driven by incremental developments across the marketplace in 2017 to steadily increase volumes. For the purpose of deriving our proposed volumes for advanced biofuel and total renewable fuel we have projected that 2.7 billion gallons of biodiesel and renewable diesel (including both advanced and conventional biofuel) can be supplied in 2017, up from the 2.5 billion gallons that was projected for 2016. This volume exceeds the previously established BBD volume requirement of 2.0 billion gallons in 2017, as we believe additional volumes of both conventional and advanced biodiesel and renewable diesel can be supplied to the United States in 2017 (see Section IV for further discussion of the BBD standard). The following sections discuss our expectations for developments in key areas affecting the supply of biodiesel and renewable diesel in 2017. For a more detailed discussion of each of these factors, see the discussion in the 2014–2016 final rule.[28] We request comment on the projected available supply of biodiesel and renewable diesel in 2017, as well as the degree to which each of the factors discussed below may impact the available supply.

i. Feedstock Availability

In previous years, the primary feedstocks used to produce biodiesel and renewable diesel in the United States have been vegetable oils (primarily soy, corn, and canola oils) and waste fats, oils, and greases. We anticipate that these feedstocks will continue to be the primary feedstocks used to produce biodiesel and renewable diesel in 2017. Supplies of these oils are expected to increase slowly over time, as oilseed crop yields increase and an increasing portion of waste oils are recovered. While some have suggested that industries that compete with the biodiesel and renewable diesel industry for vegetable oil feedstocks will turn to alternative feedstock sources, resulting in greater feedstock availability for biodiesel and renewable diesel producers, such a shift in renewable oil feedstock use would not result in an increase in the total available supply of renewable oil feedstocks, and would therefore not alter the fundamental feedstock supply dynamics for biodiesel and renewable diesel production.

We anticipate that there will be a modest increase in the available supply of feedstocks that can be used to produce biodiesel and renewable diesel in 2017. Oil crop yield increases over the next few years are expected to be modest, and significant increases in the planted acres of oil crops are expected to be limited by competition for arable land from other higher value crops. The recovery of corn oil from distillers grains and the recovery of waste oils are already widespread practices, limiting the potential for growth from these sectors. Based on currently available information, we do not believe that it is likely that the availability of feedstocks will significantly limit the supply of biodiesel and renewable diesel used for transportation fuel in the United States in 2017, as other factors that impact the available supply (discussed below) are likely to present greater challenges. However, it is possible that biodiesel production at some individual facilities, especially those built to take advantage of low-cost, locally available feedstocks, may be limited by their access to affordable feedstocks in 2017, rather than their facility capacity. Large increases in the available supply of biodiesel and renewable diesel in future years will likely depend on the development and use of new, high-yielding feedstocks, such as algal oils or alternative oilseed crops.

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[27] See Table II.E.2.i–1, 80 FR 77458.

[28] 80 FR 77465.

ii. Biodiesel and Renewable Diesel Production Capacity

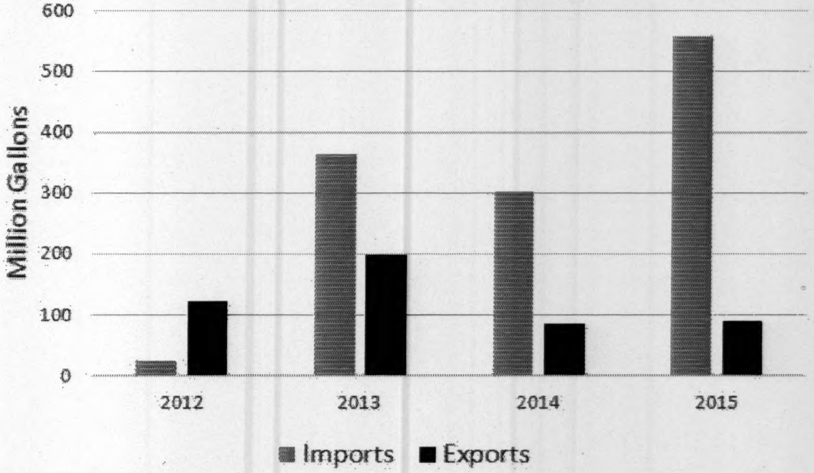
The capacity for all registered biodiesel production facilities is currently at least 2.7 billion gallons. The capacity for all registered renewable diesel production facilities is more than 0.6 billion gallons. Active production capacity is lower, however, as many registered facilities were idle in 2015. Additionally, as discussed above, the availability of economically viable feedstocks may limit biodiesel production at any given facility to a volume lower than the facility capacity.[29] As with feedstock availability, we do not expect that production capacity at registered facilities will limit the supply of biodiesel for use as transportation fuel in the United States in 2017, however the supply of renewable diesel may be limited by the production capacity at registered facilities. Renewable diesel production facilities require significant investment and time to build, and it is not likely that the capacity of registered renewable diesel production facilities will increase sufficiently in time to have a significant impact on the supply of renewable diesel to the United States in 2017. It is likely that the addition of new production capacity will be required in future years if the supply of renewable diesel is to continue to increase.

iii. Biodiesel and Renewable Diesel Import Capacity

Another important market component in assessing biodiesel and renewable diesel supply is the potential for imported volumes and the diversion of biodiesel and renewable diesel exports to domestic uses. In addition to the approximately 560 million gallons imported into the U.S. in 2015, there were about 90 million gallons exported from the United States to overseas markets. Given the right incentives, it might be possible to redirect a portion of the biodiesel consumed in foreign countries to use in the U.S. in 2017. However, the amount of biodiesel and renewable diesel that can be imported into the United States is difficult to predict, as the incentives to import biodiesel and renewable diesel to the U.S. are a function not only of the RFS and other U.S. policies and economic drivers, but also those in the other countries around the world. These policies and economic drivers are not fixed, and change on a continuing basis. Over the years there has been significant variation in both the imports and exports of biodiesel and renewable diesel as a result of varying policies and relative economic policies (See Figure II.C.2.iii–1 below). Increasing net imports significantly would require a clear signal that increasing imports was economically advantageous, potential re-negotiations of existing contracts, and upgrades and expansions at U.S. import terminals. Because of demand for biodiesel and renewable diesel in other countries and potential biodiesel distribution constraints in the United States (discussed below), we do not expect a dramatic increase in the net imports of biodiesel and renewable diesel (total biodiesel and renewable diesel imports minus exports) in 2017, but rather a moderate increase, consistent with the general trend observed in previous years.

Figure II.C.2.iii-1

Biodiesel and Renewable Diesel Imports and Exports (2012-2015)[a]



[a] Import data reported through the EMTS system. Export data sourced from EIA (http://www.eia.gov/dnav/pet/pet_move_expc_a_EPOORDB_EEX_mbbl_a.htm)

iv. Biodiesel and Renewable Diesel Distribution Capacity

While biodiesel and renewable diesel are similar in that they are both diesel fuel replacements produced from the same types of feedstocks, there are significant differences in their fuel properties that result in differences in the way the two fuels are distributed and consumed. Biodiesel is an oxygenated fuel rather than a pure hydrocarbon. It cannot currently be distributed through most pipelines due to contamination concerns with jet fuel, and often requires specialized storage facilities to prevent the fuel from gelling in cold temperatures. A number of studies have investigated the impacts of cold temperatures on storage, blending, distribution, and use of biodiesel, along with potential mitigation strategies.[30][31][32] Information provided by the National Biodiesel Board indicates that some retailers offer biodiesel blend levels that differ in the summer and winter to account for these cold temperature impacts.[33]

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[29] Due to the relatively low capital cost of biodiesel production facilities, many facilities were built with excess production capacity that has never been used.

The infrastructure needed to store and distribute biodiesel has generally been built in line with the local demand for biodiesel. In most cases the infrastructure must be expanded to bring biodiesel to new markets, and additional infrastructure may also be needed to increase the supply of biodiesel in markets where it is already being sold. Renewable diesel, in contrast, is a pure hydrocarbon fuel that is nearly indistinguishable from petroleum-based diesel. As a result, there are fewer constraints on its growth with respect to distribution capacity.

Another factor potentially constraining the supply of biodiesel is the number of terminals and bulk plants that currently distribute biodiesel. At present there are about 600 distribution facilities reported as selling biodiesel either in pure form or blended form, the majority of which are bulk plants.[34][35] These 600 facilities are still a relatively small subset of the 1400 terminals and thousands of additional bulk plants nationwide.[36] This small subset appears to be concentrated in the Midwest and most of the population centers of the country, resulting in relatively few biodiesel distribution points to provide biodiesel and biodiesel blends to a large portion of the diesel fuel retailers in the United States. As a result, for the market to continue to expand, it will likely require greater investment per volume of biodiesel supplied, as the new biodiesel distribution facilities will generally have access to smaller markets than the existing facilities, or will face competition as they seek to expand into areas already supplied by existing distribution facilities. Transportation of the biodiesel to and from the terminals and bulk plants must also be addressed, as biodiesel and biodiesel blends are precluded from being transported in common carrier pipelines. Instead, biodiesel must be transported by rail (where infrastructure permits) or truck. Either of these options results in high fuel transportation costs (relative to petroleum derived diesel, which is generally delivered to terminals via pipelines), which may impact the viability of adding biodiesel distribution capacity at a number of existing terminals or bulk plants.

The net result is that the expansion of terminals and bulk plants selling biodiesel and biodiesel blends, and the distribution infrastructure necessary to store and transport biodiesel to and from these facilities, is a significant challenge we believe will limit the potential for the rapid expansion of the biodiesel supply. This is an area in which the biodiesel industry has made steady progress over time, and we anticipate that this progress can and will continue into the future, particularly with the ongoing incentive for biodiesel growth provided by the RFS standards. Low oil prices, however, present a challenge to the expansion of biodiesel distribution infrastructure, since such projects generally have long payback timelines and parties may be hesitant to invest in new infrastructure to enable additional biodiesel distribution at a time when diesel prices are low. As with many of these potential supply constraints, increasing biodiesel storage and distribution capacity will require time and investment, limiting the potential growth in 2017.

v. Biodiesel and Renewable Diesel Retail Infrastructure Capacity

For renewable diesel, we do not expect that refueling infrastructure (*e.g.*, refueling stations selling biodiesel blends) will be a significant limiting factor in 2017 due to its similarity to petroleum-based diesel and the relatively small volumes expected to be supplied in the United States. The situation is different, however, for biodiesel. Biodiesel is typically distributed in blended form with diesel fuel as blends varying from B2 up to B20. Biodiesel blends up to and including B20 can be sold using existing retail infrastructure, and generally does not require any upgrades or modifications at the retail level. Retailers of diesel fuel, however, generally have only a single storage tank for diesel fuel. They can therefore generally only offer a single biodiesel blend. We expect that many of the retailers in this situation will be hesitant to offer biodiesel blends above B5, as doing so would mean only selling a fuel that would potentially void the warranty of many of their customers' engines if used (see following section for a further discussion of engine warranty issues). As discussed in the next section, biodiesel blends up to 5% may be legally sold as diesel fuel without the need for special labeling, and are approved for use in virtually all diesel engines. Because biodiesel blends up to B5 can be used in virtually all diesel engines and require no specialized infrastructure at refueling stations, expanding the number of refueling stations offering biodiesel blends is therefore constrained less by resistance from the retail facilities themselves, and more by the lack of nearby wholesale distribution networks that can provide the biodiesel blends to retail. As discussed in the previous section, we expect this expansion will continue at a steady pace in 2017.

vi. Biodiesel and Renewable Diesel Consumption Capacity

Virtually all diesel vehicles and engines now in the in-use fleet have been warranted for the use of B5 blends. Both the Federal Trade Commission (FTC) and ASTM International (ASTM) specification for diesel fuel (16 CFR part 306 and ASTM D975 respectively) allows for biodiesel concentrations of up to five volume percent (B5) to be sold as diesel fuel, with no separate labeling required at the pump. Biodiesel blends of up to 5% are therefore indistinguishable in this regard. Using biodiesel blends above B5 in diesel engines may, however, require changes in design, calibration, and/or maintenance practices.[37] According to NBB, approximately 80% of all diesel engine manufacturers now warrant at least one of their current offerings for use with B20 blends. This is a potentially significant factor in assessing the potential supply of biodiesel to vehicles in future years and has been a main focus of NBB's technical and outreach efforts for many years.

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[30] "Biodiesel Cloud Point and Cold Weather Issues," NC State University & A&T State University Cooperative Extension, December 9, 2010.

[31] "Biodiesel Cold Weather Blending Study," Cold Flow Blending Consortium.

[32] "Petroleum Diesel Fuel and Biodiesel Technical Cold Weather Issues," Minnesota Department of Agriculture, Report to Legislature, February 15, 2009.

[33] *http://biodiesel.org/using-biodiesel/finding-biodiesel/retail-locations/biodiesel-retailer-listings.*

[34] List of biodiesel distributers from Biodiesel.org Web site (*http://biodiesel.org/using-biodiesel/finding-biodiesel/locate-distributors-in-the-us/distributors-map*). Accessed 10/8/15.

[35] Bulk plants are much smaller than major gasoline and diesel distribution terminals, and generally receive diesel and biodiesel shipped by trucks from major terminals.

[36] Number of terminals from the American Fuel and Petrochemical Manufacturer's (AFPM) Web site, "AFPM Industry 101, Fuels Facts", (*http://education.afpm.org/refining/fuels-facts/*). Accessed 10/28/15.

[37] The vast majority of diesel fuel in the U.S. is consumed by heavy-duty vehicles and nonroad diesel engines. Only a very minor portion is consumed by light-duty diesel passenger vehicles.

Given the long life of diesel engines and the number of new engines not warranted for biodiesel blends above B5, turning over a significant portion of the fleet to engines designed and warranted for B20 is still many years off into the future. As of 2015, EPA estimates that nearly one third of the heavy duty diesel vehicles on the road were at least 15 years old, and that approximately 7 percent were at least 25 years old. The relatively large number of older diesel engines in the fleet, the significant number of new engines that are not warranted to use biodiesel blends above B5, and the fact that most diesel fuel retailers sell only a single blend of biodiesel (discussed above), means that in the near term the opportunity to sell B20 exclusively to vehicles designed and warranted to run on these blends will likely be limited to centrally-fueled fleets or retailers large enough to offer multiple biodiesel blend levels.[38]

We believe it is likely that in 2017 it will become increasingly necessary to sell higher-level biodiesel blends, greater quantities of renewable diesel, or additional volumes of biodiesel in qualifying nonroad applications to increase the total supply of biodiesel and renewable diesel. If the diesel pool contained 5% biodiesel nationwide, consumption of biodiesel would reach approximately 2.9 billion gallons in 2017. Alternatively, assuming the availability of approximately 500 million gallons of renewable diesel in 2017 (approximately a 100 million gallon increase from 2015) and the use of 100 million gallons of biodiesel in qualifying nonroad uses, approximately 73% of the highway diesel pool in 2017 would have to be sold as a B5 blend to achieve the total projected supply of biodiesel and renewable diesel of 2.7 billion gallons in 2017. Alternatively, selling appreciable volumes of biodiesel blends above B5 would mean that a smaller percentage of the diesel pool would have to contain biodiesel to achieve the proposed standards. While we believe that achieving these blend levels nationwide is possible in 2017, it will require significant effort and investment in the distribution infrastructure for biodiesel. Biodiesel consumption capacity in areas that currently have access to biodiesel blends is one of the factors likely to slow the growth of the supply of biodiesel and renewable diesel in 2017 and in future years.

vii. Biodiesel and Renewable Diesel Consumer Response

Consumer response to the availability of renewable diesel and low-level biodiesel blends (B5 or less) has been generally positive, and this does not appear to be a significant impediment to growth in biodiesel and renewable diesel use. Because of its similarity to petroleum diesel, consumers who purchase renewable diesel are unlikely to notice any difference between renewable diesel and petroleum-derived diesel fuel. Similarly, biodiesel blends up to B5 are unlikely to be noticed by consumers, especially since, as mentioned above, they may be sold without specific labeling. Consumer response to biodiesel blends is also likely aided by the fact that despite biodiesel having roughly 10 percent less energy content than diesel fuel, when blended at 5 percent the fuel economy impact of B5 relative to petroleum-derived diesel is a decrease of only 0.5%, an imperceptible difference. Consumer response has been further aided by the lower prices that many wholesalers and retailers have been willing to provide to the consumers for the use of biodiesel blends. The economic incentives provided by the biodiesel blenders tax credit and the RIN have made it possible for some retailers to realize additional profits while selling biodiesel blends, while in many cases offering these blends at a lower price per gallon than diesel fuel that has not been blended with biodiesel. The ability for retailers to offer biodiesel blends at competitive prices relative to diesel that does not contain biodiesel, even at times when oil prices are low, is a key factor in the consumer acceptance of biodiesel and renewable diesel.

viii. Projected Supply of Biodiesel and Renewable Diesel in 2017

Due to the large number of market segments where actions and investments may be needed to support the continued growth of biodiesel blends, it is difficult to isolate the specific constraint or group of constraints that would be the limiting factor or factors to the supply of biodiesel and renewable diesel in the United States in 2017. Not only are many of the potential constraints inter-related, but they are likely to vary over time. The challenges in identifying a single factor limiting the growth in the supply of biodiesel and renewable diesel in 2017 does not mean, however, that there are no constraints to the growth in supply.

A starting point in developing a projection of the available supply of biodiesel and renewable diesel in 2017 is a review of the volumes of these fuels supplied for RFS compliance in previous years. In examining the data, both the absolute volumes of the supply of biodiesel and renewable diesel in previous years, as well as the rates of growth between years are relevant considerations. The volumes of biodiesel and renewable diesel (including both D4 and D6 biodiesel and renewable diesel) supplied each year from 2011 through 2015 are shown below.

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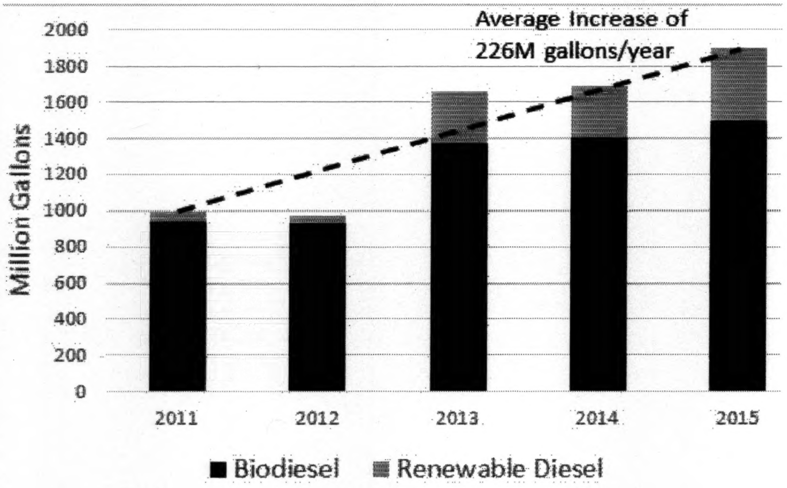
[38] Although as stated above, some public retailers are choosing to sell only B11 or B20 blends and allowing the consumer the option of either going elsewhere or purchasing fuel for which their engines are not warranted.

Figure II.C.2.viii-1
Biodiesel and Renewable Supply by Year (2011-2015)[a]



[a] Values represent current estimates of the net supply of biodiesel and renewable diesel (including conventional, advanced, and BBD biodiesel and renewable diesel), accounting for the production, import, and export of biodiesel and renewable diesel. Future RIN retirements, required by enforcement actions of for other reasons, may impact the number of biodiesel and renewable diesel RINs available for compliance purposes..

To use the historical data to project the available supply of biodiesel and renewable diesel in 2017 we started with the volume expected to be supplied in 2016 (2.5 billion gallons), and then assessed how much the supply could be expected to increase in 2017 in light of the constraints discussed above. Using historic data is appropriate to the extent that growth in the year or years leading up to 2016 reflects the rate at which biodiesel and renewable diesel constraints can reasonably be expected to be addressed and alleviated in the future. In assessing the potential growth of biodiesel and renewable diesel in 2017 we believe this to be the case. There are many potential ways the historical data could be used to project the supply of biodiesel and renewable diesel in future years. Two relatively straight-forward methods would be to use either the largest observed annual supply increase (689 million gallons from 2012 to 2013) or the average supply increase (226 million gallons from 2011 to 2015) to project how much biodiesel and renewable diesel volumes could increase over 2016 levels in 2017. We appreciate that there are limitations in the probative value of past growth rates to assess what can be done in the future, however we believe there is significant value in considering historical data, especially in such cases where the future growth rate will be determined by the same variety of complex and inter-dependent factors that have factored into historical growth.

In projecting the available supply of biodiesel and renewable diesel in 2016 for the final rule establishing the 2014–2016 standards, we estimated that the supply of biodiesel and renewable diesel could increase from the level supplied in 2015 in line with the largest observed annual supply increase from the historic record. While RIN available generation data for 2016 is limited, we continue to believe this high year-over-year increase is possible in part due to the relatively small growth in the supply of biodiesel and renewable diesel in 2014 and 2015, during which no annual standards were in place to promote growth in the supply of biodiesel and renewable diesel and during which time the biodiesel blenders tax credit was only reinstated retroactively. During these years (2014–2015) we believe that the supply of biodiesel likely grew at a slower rate than the progress being made to expand the potential supply of biodiesel and renewable diesel used as transportation fuel in the United States due to the absence of standards in these years. We believe that the significant increase in the projected supply of biodiesel and renewable diesel from 2015 to 2016 will therefore be significantly enabled by the relatively slow growth in supply in 2014 and 2015. We do not believe that a similarly large supply increase in 2017 is possible after such a large increase from 2015 to 2016. Instead, we believe that an approximately 200 million gallon per year increase, more reflective of the average annual increased observed from 2011 to 2015 (the most recent year for which data is currently available), best reflects the maximum reasonably achievable growth rate for the supply of biodiesel and renewable diesel in 2017.

We recognize that these growth rates achieved in the past (the average annual growth rate and the largest annual supply increase) do not necessarily indicate the growth rate that can be achieved in the future. In the past, biodiesel was available in fewer markets, allowing new investments to be targeted to have a maximum impact on volume. However, as the market becomes more saturated and biodiesel becomes available in an increasing number of markets, additional investments may tend to have less of an impact on volume, limiting the potential large increases in supply year over year. Additionally, much of the increase in the volume of biodiesel and renewable diesel supplied from 2012 to 2013 was renewable diesel, which is faced with far fewer distribution and consumption challenges than biodiesel for blends above B5. Such an increase in the available supply of renewable diesel in 2017 is unlikely as we are currently unaware of any renewable diesel facilities under construction that are likely to supply significant volumes of fuel to the United States in 2017, and the capital costs and construction timelines associated with constructing new renewable diesel facilities are significant. It will likely require greater investment to achieve the same levels of growth in the supply of biodiesel and renewable diesel in 2017 as compared to previous years. However, we must also consider the extent to which historic growth rates can be seen as representing the maximum reasonably achievable growth that is possible with the RFS standards and other incentives in place. The year with the historic maximum rate of growth was 2013—a year in which both tax incentives and RFS incentives were in place to incentivize growth, and the infrastructure constraints related to the distribution and use of biodiesel were not as significant as they are presently. We believe it is reasonable to assume the incentives provided by the standards in 2017 will be sufficient to enable the proposed supply increases in these years despite these challenges discussed above, but do not believe that a rate of growth equal to that seen in 2013 is possible in 2017.

The present constraints do not represent insurmountable barriers, but they will take time to overcome. The market has been making efforts to overcome these constraints in recent years, as demonstrated by the fact that biodiesel and renewable diesel consumption in the U.S. has been steadily increasing. We believe that opportunity for ongoing growth exists, but that the constraints listed above will continue to be a factor in the rate of growth in future years. We recognize that the market may not necessarily respond to the final total renewable standard by supplying exactly 2.7 billion gallons of biodiesel and renewable diesel to the transportation fuels market in the United States in 2017, but that the market may instead supply a slightly lower or higher volume of biodiesel and renewable diesel with corresponding changes in the supply of other types of renewable fuel. As a result, we believe there is less uncertainty with respect to achievability of the total volume requirement than there is concerning the projected 2.7 billion gallons of biodiesel and renewable diesel that we have used in deriving the proposed total renewable fuel volume requirement for 2017. We request comment on the projected supply of biodiesel and renewable diesel used as transportation fuel in the United States in 2017, as well as the factors that may enable or inhibit the growth in the supply of these fuels.

3. Total Renewable Fuel Supply

The total volume of renewable fuel that can be supplied in 2017 is driven primarily by the estimated supplies of ethanol and biodiesel/renewable diesel, as discussed in the previous sections. Cellulosic biogas can also contribute to the total volume of renewable fuel, as described more fully in Section III. While other renewable fuels such as naphtha, heating oil, butanol, and jet fuel can be expected to continue growing over the next year, collectively, we expect them to contribute considerably less to the total volume of renewable fuel that can be supplied in 2017.[39]

Most biofuel types can be produced as either advanced biofuel (with a D code of 3, 4, 5, or 7) or as conventional renewable fuel (with a D code of 6), depending on the feedstock and production process used. Our estimate of the supply of total renewable fuel shown in the table below includes contributions from both advanced biofuels and conventional renewable fuels.

TABLE II.C.3–1—VOLUMES USED TO DETERMINE THE PROPOSED TOTAL RENEWABLE FUEL VOLUME REQUIREMENTS IN 2017

[Million ethanol-equivalent gallons except as noted]

Ethanol	14,400
Biodiesel and renewable diesel (ethanol-equivalent volume/physical volume)	4,050/2,700
Biogas	285
Other non-ethanol renewable fuels[a]	50
Total renewable fuel	18,785

[a] Includes naphtha, heating oil, butanol, and jet fuel.

Based on this assessment, we are proposing a total renewable fuel volume requirement of 18.8 billion gallons for 2017. We request comment on this proposed volume requirement and the basis as shown in the table above, and whether a volume requirement higher or lower than we are proposing would be more appropriate taking into consideration more recent data and factors such as the ability of the volume requirements to lead to increases in supply of renewable fuels.

We note that the contributions from individual sources shown in Table II.C.3–1 were developed only for the purpose of determining the proposed volume requirements; they do not represent EPA's projection of precisely how the market would respond if we set the total renewable fuel volume requirement at 18.8 billion gallons for 2017. As we said in the 2014–2016 final rule, any supply estimate we make for particular fuel types may be uncertain, but there is greater certainty that the overall volume requirements can be met given the flexibility in the market that is inherent in the RFS program. The contributions from individual sources that we have used in the table above are illustrative of one way in which the volume requirements for total renewable fuel could be met. Actual market responses could vary widely, as described more fully in Section II.E.

The volume of total renewable fuel that we are proposing for 2017 reflects our assessment of the maximum volumes that can reasonably be achieved, taking into account both the constraints on supply discussed previously and our judgment regarding the ability of the standards we set to result in marketplace changes. As shown in Figure II.C.3–1, the proposed volume requirements would follow an upward trend consistent with that from previous years.

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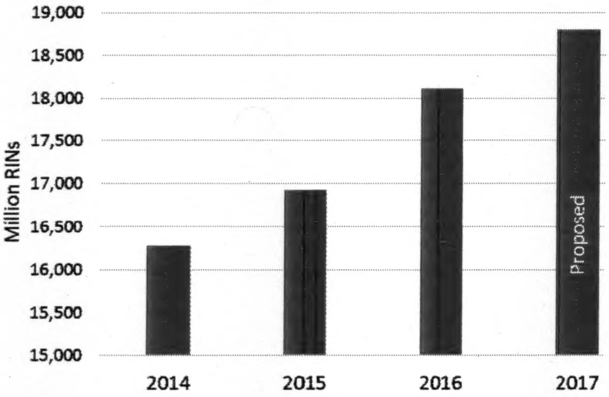
[39] Supply of these other types of renewable fuel reached 33 million gallons in 2015.

Figure II.C.3-1
Growth in Total Renewable Fuel



D. Advanced Biofuel Volume Requirement

As noted earlier, the CAA provides EPA with two waiver authorities. For the 2014–2016 final rule, we used the cellulosic waiver authority alone to reduce statutory volumes of advanced biofuel to levels we determined to be reasonably attainable; in doing so we did not reduce advanced biofuel by the full reduction in cellulosic biofuel. We reduced total renewable fuel by the same amount using that authority, and then by additional increment using the general waiver authority. As discussed in Section II.A, EPA has broad discretion in using the cellulosic waiver authority, since Congress did not specify the circumstances under which it may or should be used nor the factors to consider in determining appropriate volume reductions. We note that increases in the statutory volume targets after 2015 are only in advanced biofuel, and that advanced biofuel provides relatively large GHG reductions in comparison to conventional renewable fuel. In light of these facts, our approach in the 2014–2016 final rule was to set the 2016 advanced biofuel volume requirement at a level that was reasonably attainable taking into account uncertainties related to such factors as production, import, distribution, and consumption constraints associated with these fuels. The result of that approach is that reasonably attainable volumes of advanced biofuel will compensate for a portion of the shortfall in cellulosic biofuel in 2016, thereby promoting the larger RFS goals of reducing GHGs and enhancing energy security. We are proposing to take the same approach to determining the advanced biofuel volume requirement for 2017.

Our proposed approach to identifying "reasonably attainable" volumes of advanced biofuel using the cellulosic waiver authority is different than our proposed approach under the general waiver authority of identifying the "maximum reasonably achievable supply." In proposing to exercise the cellulosic waiver authority in this rulemaking, we are not required, and do not intend, to necessarily identify the most likely "maximum" volumes of advanced biofuel that can be used in 2017. We believe that in exercising our discretion under the cellulosic waiver authority we can identify reasonably attainable volumes in a manner that is similar to, but may be less exacting than, a determination of inadequate domestic supply using the general waiver authority.[40]

Given that advanced biofuels are a subset of total renewable fuel, the proposed 2017 volume requirement for advanced biofuel reflects our proposed assessment of the portion of total renewable fuel that should be required to be advanced biofuel. We have made this assessment separately for ethanol, biodiesel/renewable diesel, and other renewable fuels.

With regard to ethanol, the primary source of advanced biofuel continues to be imported sugarcane ethanol. As described in the 2014–2016 final rule, the supply of imported sugarcane ethanol has been highly uncertain. Both total ethanol imports and imports of Brazilian sugarcane ethanol have varied significantly since 2004, and in 2014 and 2015 they reached only 64 and 89 million gallons, respectively. Much of this variability can be tied to the worldwide price of sugar: between 2005 and 2015, year-to-year Brazilian production of sugar has increased just as often as it has decreased.[41] Total gasoline consumption in Brazil also continues to climb, reducing the potential for substantial increases in exports of ethanol in 2017 as ethanol serves as a critical source of fuel supply in Brazil to meet increasing demand.[42] These considerations led us to determine that 200 million gallons of imported sugarcane ethanol was an appropriate volume to use in determining the 2016 volume requirement for advanced biofuel.

The information currently available to us does not suggest that the circumstances will be significantly different for 2017 than they are for 2016. For the purposes of deriving the proposed advanced biofuel volume requirements for 2017, then, we have assumed that imports of sugarcane ethanol will be 200 million gallons, the volume that we used in establishing the 2016 volume requirement for advanced biofuel. This volume is approximately equal to the average annual import volume between 2010 and 2015. Apart from this assumed level in the determination of the proposed advanced biofuel volume requirement for 2017, we note that actual imports of sugarcane ethanol could be higher or lower than

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[40] See Monroe Energy v. EPA, 750 F.3d 909, 915 (affirming EPA's broad discretion in adjusting advanced biofuel and total renewable fuel volumes under the cellulosic waiver provision).

[41] "UNICA—Updated Information on Brazils Sugarcane Production—Oct 2015," EPA docket EPA–HQ–OAR–2016–0004.

[42] "Gasoline Demand in Brazil: An empirical analysis," Thaís Machado de Matos Vilela, Pontifical Catholic University of Rio de Janeiro, Figure 2.

200 million gallons as shown in the scenarios for how the market could respond in Section II.E below. For the purposes of determining the final applicable volume requirements, we may adjust this value upwards or downwards based on more recent data on actual imports of sugarcane ethanol that we obtain from commenters or that may otherwise become available prior to the time we issue the final rule.

With regard to biodiesel and renewable diesel, past experience suggests that a high percentage of the supply of these fuel types to the United States qualifies as advanced biofuel. In previous years biodiesel and renewable diesel produced in the United States has been almost exclusively advanced biofuel. It is also likely that some advanced biodiesel will be imported in 2017, as discussed in Section II.C.2.iii. Setting the 2017 advanced biofuel volume requirement so as to require that a high percentage of the projected total supply of biodiesel and renewable diesel would be in the form of advanced biofuel would not only reflect past experience, but would also enhance the GHG benefits of the RFS program.

However, we also acknowledge that imports of conventional (D6) biodiesel and renewable diesel have increased in recent years, and are likely to continue to contribute to the supply of renewable fuel in the United States in 2017.[43] Moreover, the potential constraints related to the distribution and use of biodiesel, discussed in Section II.C.2.iv through vi above, may lead to an increasing demand for renewable diesel, which faces fewer potential constraints related to distribution and use than biodiesel. Much of the renewable diesel produced globally would qualify as conventional, rather than advanced biofuel, and we therefore expect that conventional renewable diesel will continue to be an important source of renewable fuel used in the United States in 2017. At the same time, the future supply to the U.S. market of any imported renewable fuel is particularly difficult to assess given potential developments throughout the world that may influence actual import levels.

In the context of setting the 2016 volume requirements in the 2014–2016 final rule, we indicated that supply of conventional biodiesel and renewable diesel could increase significantly in comparison to 2015 supply. For 2017, we believe it would be prudent to assume the same level of supply until we can collect additional information on how the market is reacting to the 2016 volume requirements. Doing so also places an emphasis on growth in advanced forms of biodiesel and renewable diesel, furthering the GHG goals of the RFS program. Therefore, for the purposes of determining the proposed volume requirements in this rule, we believe it would be reasonable to assume that the increase in total biodiesel and renewable diesel in 2017 is attributed entirely to increases in the supply of advanced biodiesel and renewable diesel. The volumes that we propose using are shown below, along with the volumes that we used in setting the 2016 volume requirements.

TABLE II.D–1—ADVANCED AND TOTAL BIODIESEL + RENEWABLE DIESEL USED FOR DETERMINING THE PROPOSED VOLUME REQUIREMENTS FOR 2017

[Million physical gallons]

	2016	2017
Total	2,500	2,700
Advanced	2,100	2,300
Conventional	400	400

The 2016 volume requirements represented substantial increases in both advanced and conventional biodiesel and renewable diesel in comparison to 2015. The annual increase we are proposing to use for 2017, as shown in the table above, would be more moderate. We believe that this is reasonable because the circumstances we are facing in this action are different than those we were facing in the 2014–2016 final rule. The 2016 standards were designed to reflect the fact that the 2014 and 2015 standards had not been set by the statutory deadlines even though the market had continued to make progress during that time to expand supply. There will be comparatively less time available for the market to prepare to meet the applicable standards for 2017. Moreover, as the volumes of biodiesel and renewable diesel increase, the marketplace challenges associated with them also increase, generally making each increment more difficult to attain than the last. As the country becomes saturated with retail and distribution infrastructure in the major fuel consumption areas, we expect that it will be increasingly costly to expand biodiesel and renewable diesel into areas with less favorable returns on investments.

We note that the volumes shown in Table II.D–1 above cannot themselves be viewed as volume requirements. The volumes shown in Table II.D–1 are merely the basis on which we have determined the proposed volume requirements for advanced biofuel and total renewable fuel. As discussed in more detail in Section II.E below, there are many ways that the market could respond to the volume requirements we are proposing, including biodiesel and renewable diesel volumes higher or lower than those shown in Table II.D–1.

Due to the nested nature of the standards, all cellulosic biofuel qualifies toward meeting the advanced biofuel volume requirement. As shown in Table II.C.3–1, we also believe that the market can supply about 50 million gallons of advanced biofuel other than ethanol, biodiesel, and renewable diesel in 2017. The combination of all sources of advanced biofuel lead us to believe that 4.0 billion gallons of advanced biofuel in 2017 is reasonably attainable, and that it is not necessary to reduce the advanced biofuel statutory target by the full amount permitted under the cellulosic waiver authority (which would have resulted in an advanced biofuel volume requirement of 3.8 billion gallons). This is the volume requirement that we are proposing for advanced biofuel for 2017.

TABLE II.D–2—VOLUMES USED TO DETERMINE THE PROPOSED ADVANCED BIOFUEL VOLUME REQUIREMENTS IN 2017

[Million ethanol-equivalent gallons except as noted]

Cellulosic biofuel	312
Advanced biodiesel and renewable diesel (ethanol-equivalent volume/physical volume)	3,450/2,300
Imported sugarcane ethanol	200
Other non-ethanol advanced	50
Total advanced biofuel	4,012

We request comment on this proposed volume requirement for advanced biofuel and the basis as shown in the table above, and whether a volume requirement higher or lower than we are proposing would be more appropriate taking into consideration more recent data and factors such as the ability of the volume requirements to lead to increases in supply of renewable fuels.

As noted before, the volumes actually used to satisfy the advanced biofuel volume requirements may be different than those shown in the table above. The volumes of individual types of renewable fuel that we have used in this analysis represent our current best estimate of volumes that are reasonably attainable by a market that is responsive to the RFS standards. However, given the uncertainty in these estimates, the volumes of individual types of advanced biofuel may be higher or lower than those shown above.

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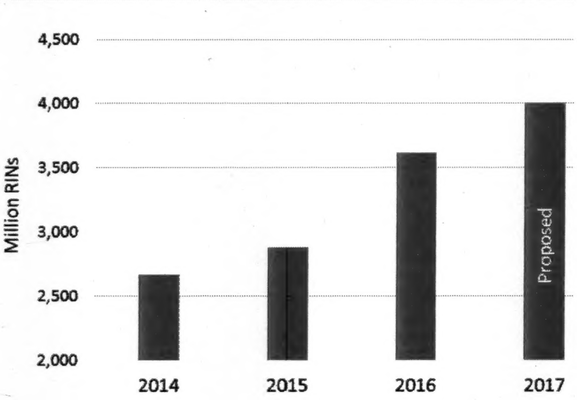
[43] For instance, imports of qualifying conventional biodiesel and renewable diesel were 53 mill gal in 2014 and 179 mill gal in 2015.

The volume of advanced biofuel that we are proposing would require increases from current levels that are substantial yet reasonably attainable, taking into account the constraints on supply discussed previously, our judgment regarding the ability of the standards we set to result in marketplace changes, and the various uncertainties we have described. Figure II.D–1 shows that the proposed advanced biofuel volume requirement for 2017 would be significantly higher than the volume requirements for advanced biofuel in previous years.

Figure II.D-1
Growth in Advanced Biofuel



We believe the reduction we have proposed in the statutory target for advanced biofuel is justifiable in light of our assessment regarding the reasonable attainability of advanced biofuel volumes in this time period. Moreover, because the proposed reduction in advanced biofuel is less than the proposed reductions in cellulosic biofuel, the reduction can be accomplished using the cellulosic waiver authority alone. We propose to use the cellulosic waiver authority to provide an equal reduction in the total renewable fuel volume, and the general waiver authority to provide an additional increment of reduction necessary to lower the total renewable fuel volume requirement to the maximum level reasonably achievable as described in Section II.C.

E. Market Responses to the Proposed Advanced Biofuel and Total Renewable Fuel Volume Requirements

The transportation fuel market is dynamic and complex, and the RFS program is only one of many factors that determine the relative types and amounts of renewable fuel that will be used. We know that to meet the proposed volume requirements, the market would need to respond by increasing domestic production and/or imports of those biofuels that have fewer marketplace constraints, by expanding the infrastructure for distributing and consuming renewable fuel, and by improving the relative pricing of renewable fuels and conventional transportation fuels at the retail level to ensure that they are attractive to consumers. However, we cannot precisely predict the mix of different fuel types that would result. Nevertheless, we can delineate a range of possibilities, and doing so provides a means of demonstrating that the proposed volume requirements can reasonably be satisfied through multiple possible paths.

We evaluated a number of scenarios with varying levels of E85/E15, E0, imported sugarcane ethanol, advanced biodiesel and renewable diesel, and conventional biodiesel and renewable diesel (likely to be made from palm oil). In doing so we sought to capture the range of possibilities for each individual source, based both on levels achieved in the past and how the market might respond to the proposed standards. Each of the rows in Table II.E–1 represents a scenario in which the proposed total renewable fuel and advanced biofuel volume requirements would be satisfied.

TABLE II.E–1—VOLUME SCENARIOS ILLUSTRATING POSSIBLE COMPLIANCE WITH THE PROPOSED 2017 VOLUME REQUIREMENTS

[Million gallons][a][b]

E85	E15	E0	Total ethanol[c]	Sugarcane ethanol	Total biodiesel[d]	Minimum volume of advanced biodiesel[e]
200	600	100	14,358	0	2,738	2,425
200	600	300	14,337	0	2,752	2,425
200	600	300	14,337	200	2,752	2,292
200	600	300	14,337	400	2,752	2,159
200	600	300	14,337	638	2,752	2,000

TABLE II.E–1—VOLUME SCENARIOS ILLUSTRATING POSSIBLE COMPLIANCE WITH THE PROPOSED 2017 VOLUME REQUIREMENTS—Continued

[Million gallons] [a] [b]

E85	E15	E0	Total ethanol [c]	Sugarcane ethanol	Total biodiesel [d]	Minimum volume of advanced biodiesel [e]
200	800	100	14,368	400	2,731	2,159
400	600	300	14,469	638	2,664	2,000
400	800	100	14,500	0	2,643	2,425
400	800	100	14,500	200	2,643	2,292
400	800	100	14,500	400	2,643	2,159
400	800	100	14,500	638	2,643	2,000
400	800	300	14,480	200	2,657	2,292

[a] Assumes for the purposes of these scenarios that supply of other advanced biofuel other than ethanol, BBD and renewable diesel (*e.g.* heating oil, naphtha, etc.) is 50 mill gal, and that the cellulosic biofuel final standard is 312 mill gal, of which 27 mill gal is ethanol and the remainder is primarily biogas.

[b] Biomass-based diesel, conventional biodiesel, and total biodiesel are given as biodiesel-equivalent volumes, though some portion may be renewable diesel. Other categories are given as ethanol-equivalent volumes. Biodiesel-equivalent volumes can be converted to ethanol-equivalent volumes by multiplying by 1.5.

[c] For the range of total ethanol shown in this table, the nationwide pool-wide average ethanol content would range from 10.09% to 10.20%.

[d] Includes supply from both domestic producers as well as imports.

The scenarios in the tables above are not the only ways that the market could choose to meet the total renewable fuel and advanced biofuel volume requirements that we are proposing. Indeed, other combinations are possible, with volumes higher than the highest levels we have shown above or, in some cases, lower than the lowest levels we have shown. The scenarios above cannot be treated as EPA's views on the only, or even most likely, ways that the market may respond to the proposed volume requirements. Instead, the scenarios are merely illustrative of the various ways that it could play out. Our purpose in generating the list of scenarios above is only to illustrate a range of possibilities which demonstrate that the standards we are proposing in this action can reasonably be satisfied.

We note that it would be inappropriate to construct a new scenario based on the highest volumes in each category that are shown in the tables above in order to argue for higher volume requirements than we are proposing in this action. Doing so would result in summing of values that we have determined are higher than the most likely maximum achievable volumes of the different fuel categories, resulting in a total volume that we believe would be extremely unlikely to be achievable. We have more confidence in the ability of the market to achieve the proposed volume requirements for advanced biofuel and total renewable fuel than we have in the ability of the market to achieve a specific level of, say, biodiesel, or E85. The probability that the upper limits of all sources shown in the tables above could be achieved simultaneously is very small.

We recognize that in some scenarios the volume of a particular category of renewable fuel exceeds the historical maximum or previously demonstrated production level. However, this does not mean that such levels are not achievable. The RFS program is intended to result in supply in any given year that is higher than in all previous years, and it is our proposed determination that for 2017 this is possible. We request comment on our proposed assessment of the levels of supply that are reasonably achievable in 2017.

With regard to E85, under highly favorable conditions related to growth in the number of E85 retail stations, retail pricing, and consumer response to that pricing, it is possible that E85 volumes as high as 400 million gallons could be reached. USDA's Biofuels Infrastructure Partnership grant program, an important program to expand ethanol retail infrastructure, is expected to help in this regard. This program will increase the number of retail stations that have blender pumps by nearly 1,500. While the program requires only that the blender pumps be certified to offer E15, it is likely that some will also be certified to offer E85. If all of them are certified to dispense both E15 and E85, the total number of retail stations offering E85 could increase from about 3,100 today to 4,500 by 2017, an increase of about 50%. Increases in the price of D6 RINs since the release of the 2014–2016 final rule can help to increase the E85 price discount relative to E10 if producers and marketers of E85 pass the value of the RIN to the prices offered to customers at retail, providing greater incentive to FFV owners to refuel with E85 instead of E15. Efforts to increase the visibility of E85, including expanded marketing and education, can also help to increase E85 sales. As shown in a memorandum to the docket, 400 million gallons of E85, while unlikely, could be reached under these circumstances.[44] Sales volumes of E85 higher than 400 million gallons are very unlikely, but are possible if the market can overcome constraints associated with E85 pricing at retail and consumer responses to those prices.

Similarly, we believe that under favorable conditions, it is possible that E15 volumes as high as 800 million gallons could be reached in 2017. The nearly 1,500 additional blender pumps that are expected to be installed as a result of USDA's Biofuels Infrastructure Partnership grant program must be certified to offer E15. Combined with previously existing retail stations registered to offer E15 and ongoing efforts to expand E15 offerings at retail apart from USDA's program, it is possible that 1,700 stations could offer E15 by 2017. Since the average retail station will sell about 950 thousand gallons of gasoline in 2017, 800 million gallons of E15 could be sold if about half of the gasoline sold at each of these 1,700 stations was E15.[45] Under these conditions, the use of E15 instead of E10 would increase total ethanol use by about 40 million gallons. Given that the vast majority of vehicles in the current fleet are legally permitted to use E15, we believe that this is possible with moderately favorable pricing of E15 compared to E10.

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[44] "Estimating achievable volumes of E85," memorandum from David Korotney to docket EPA–HQ–OAR–2016–0004.

[45] We recognize that retail stations vary significantly in size. However, we do not have sufficient information to determine the size of those stations that currently offer E15 or will in the future. In the absence of such information, we have assumed that stations offering E15 are of the average (mean) size.

As the tables above illustrate, the proposed volume requirements could result in the consumption of more than 2.7 billion gallons of biodiesel and renewable diesel in 2017. While this level is approximately the same as our estimate of the production capacity of facilities that are currently registered under the RFS program (about 2.7 billion gallons for biodiesel, plus smaller amounts for renewable diesel at dedicated facilities), such facilities are not the only possible source. Not only is there more than several hundred million gallons of unregistered biodiesel production capacity, but there is also the potential for production of renewable diesel at existing crude oil refineries. Finally, imports of biodiesel and renewable diesel reached about 560 million gallons in 2015 and there is no reason to believe that such imports would be substantially less in 2017.

While renewable diesel is chemically indistinguishable from fossil-based diesel fuel, and thus is not subject to any constraints with regard to distribution, cold temperatures, or engine warranties, biodiesel is constrained to some degree in these areas. Out of the maximum of about 2.7 billion gallons of biodiesel and renewable diesel shown in Table II.E–1, more than 2.4 billion gallons could be advanced biodiesel. While this is higher than the 2.3 billion gallons that we used in determining the proposed advanced biofuel volume requirement, it could be supplied from current domestic production capacity which is at least 2.7 billion gallons. The existing fleet of diesel engines may be able to accommodate this volume of biodiesel despite the fact that many in-use diesel engines are only warranted for B5 or less.

F. Impacts of Proposed Standards on Costs

In this section we provide illustrative cost estimates for the proposed standards. By "illustrative costs," EPA means the cost estimates provided are not meant to be precise measures, nor do they attempt to capture the full impacts of the proposed rule. These estimates are provided solely for the purpose of showing how the cost to produce a gallon of a "representative" renewable fuel compares to the cost of petroleum fuel. There are a significant number of caveats that must be considered when interpreting these cost estimates. First, there are a number of different feedstocks that could be used to produce ethanol and biodiesel, and there is a significant amount of heterogeneity in the costs associated with these different feedstocks and fuels. Some fuels may be cost competitive with the petroleum fuel they replace; however we do not have cost data on every type of feedstock and every type of fuel. Therefore, we do not attempt to capture this range of potential costs in our illustrative estimates.

Second, as discussed in the final rule establishing the 1.28 billion gallon requirement for BBD in 2013, the costs and benefits of the RFS program as a whole are best assessed when the program is fully mature in 2022 and beyond.[46] We continue to believe that this is the case, as the annual standard-setting process encourages consideration of the program on a piecemeal (*i.e.,* year-to-year) basis, which may not reflect the long-term economic effects of the program. Thus, EPA did not quantitatively assess other direct and indirect costs or benefits of increased renewable fuel volumes such as infrastructure costs, investment, GHG reduction benefits, air quality impacts, or energy security benefits, which all are to some degree affected by the proposed rule. While some of these impacts were analyzed in the 2010 final rulemaking which established the current RFS program, we have not fully analyzed these impacts for the 2017 volume requirements being proposed. We have framed the analyses we have performed for this proposed rule as "illustrative" so as not to give the impression of comprehensive estimates.

Third, at least two different scenarios could be considered the "baseline" for the assessment of the costs of this rule. One scenario would be the statutory volumes (*e.g.,* the volumes in the Clean Air Act 211(o)(2) for 2016) in which case this proposed rule would be reducing volumes, reducing costs as well as decreasing expected GHG benefits. For the purposes of showing illustrative overall costs of this rulemaking, we use the preceding year's standard as the baseline (*e.g.,* the baseline for the 2017 advanced standard is the proposed 2016 advanced standard), an approach consistent with past practices in previous annual RFS rules.

EPA is providing cost estimates for three illustrative scenarios—one, if the entire change in the proposed advanced standards is met with soybean oil BBD; two, if the entire change in the proposed advanced standards is met with sugarcane ethanol from Brazil; and three, if the entire proposed change in the total renewable fuel volume standards that can be satisfied with conventional biofuels (*i.e.,* non-advanced) is met with corn ethanol. While a variety of biofuels could help fulfill the advanced standard beyond soybean oil BBD and sugarcane ethanol from Brazil, these two biofuels have been most widely used in the past. The same is true for corn ethanol vis-a-vis the non-advanced component of the total renewable fuel standard. We believe these scenarios provide illustrative costs of meeting the proposed standards.

For this analysis, we estimate the per gallon costs of producing biodiesel, sugarcane ethanol, and corn ethanol relative to the petroleum fuel they replace at the wholesale level, then multiply these per gallon costs by the proposed applicable volumes in this rule for the advanced (for biodiesel and sugarcane ethanol) and non-advanced component of the total renewable fuel (for corn ethanol) categories. More background information on this section, including details of the data sources used and assumptions made for each of the scenarios, can be found in a Memorandum submitted to the docket.[47]

Because we are focusing on the wholesale level in each of the three scenarios, these comparisons do not consider taxes, retail margins, and any other costs or transfers that occur at or after the point of blending (*i.e.,* transfers are payments within society and are not additional costs). Further, as mentioned above we do not attempt to estimate potential costs related to infrastructure expansion with increased renewable fuel volumes. In addition, because more ethanol gallons must be consumed to go the same distance as gasoline and more biomass-based diesel must be consumed to go the same distance as petroleum diesel due to each of the biofuels' lesser energy content, we consider the costs of ethanol and biomass-based diesel on an energy equivalent basis to their petroleum replacements (*i.e.,* per energy equivalent gallon).

For our first illustrative cost scenario, we estimate the costs of soybean-based biodiesel to meet the entire change in the advanced biofuel standards proposed for 2017.[48] Table II.F–1 below

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[46] 77 FR 59477, September 27, 2012.

[47] "Illustrative Costs Impact of the Proposed Annual RFS2 Standards, 2017", Memorandum from Aaron Sobel and Michael Shelby to EPA Docket EPA–HQ–OAR–2016–0004.

[48] Soybean biodiesel could meet the pre-established 2017 biomass-based diesel volume, which itself is a nested volume within the proposed

Continued

presents the annual change in volumes proposed by this rule, a range of illustrative cost differences between biomass-based diesel and petroleum-based diesel by individual gallon on a diesel gallon equivalent (DGE) basis, and multiplies those per gallon cost estimates by the volume of fuel displaced by the advanced standard on an energy equivalent basis to obtain an overall cost estimate of meeting the proposed standard.

TABLE II.F–1—ILLUSTRATIVE COSTS OF SOYBEAN BIODIESEL TO MEET PROPOSED INCREASE IN ADVANCED BIOFUEL STANDARDS IN 2017

	2016	2017
Advanced Volume Required (Million Gallons)	3,610	4,000
Advanced Volume Required (Million Gallons as Biodiesel)	2,407	2,667
Annual Change in Volume Required (Million Gallons as Biodiesel) *(DGE*[49]*)*		260 *(238)*
Cost Difference Between Soybean Biodiesel and Petroleum Diesel per Gallon ($/DGE)		$1.91–2.88
Annual Increase in Overall Costs (Million $)		[50] $453–683

For our second illustrative cost scenario, we estimate the costs of Brazilian sugarcane ethanol to meet the entire change in the advanced biofuel standards proposed for 2017. Table II.F–2 below presents the annual change in volumes proposed by the rule, a range of illustrative cost differences between Brazilian sugarcane ethanol and wholesale gasoline on a per gasoline gallon equivalent (GGE) basis, and multiplies those per gallon cost estimates by the volume of fuel displaced by the advanced standard on an energy equivalent basis to obtain an overall cost estimate of meeting the proposed standard.

TABLE II.F–2—ILLUSTRATIVE COSTS OF BRAZILIAN SUGARCANE ETHANOL TO MEET PROPOSED INCREASE IN ADVANCED BIOFUEL STANDARDS IN 2017

	2016	2017
Advanced Volume Required (Million Gallons)	3,610	4,000
Annual Change in Volume Required (Million Gallons) *(GGE)*[51]		390 *(260)*
Cost Difference Between Sugarcane Ethanol and Gasoline per Gallon ($/GGE)		$1.12–2.25
Annual Increase in Overall Costs (Million $)		[52] $290–585

For our third illustrative cost scenario, we assess the difference in cost associated with a change in the implied volumes available for conventional (*i.e.,* non-advanced) biofuels for 2017. We provide estimates of what the potential costs might be if corn ethanol is used to meet the entire proposed change in implied conventional renewable fuel volumes. Table II.F–3 below presents the annual change in volumes proposed by the rule, a range of illustrative cost differences between corn ethanol and the wholesale gasoline on a per gasoline gallon equivalent (GGE) basis, and multiplies those per gallon cost estimates by the volume of petroleum displaced on an energy equivalent basis by the proposed change in implied conventional fuel volumes for an estimated overall cost in 2017.

TABLE II.F–3—ILLUSTRATIVE COSTS OF CORN ETHANOL TO MEET PROPOSED INCREASE IN THE CONVENTIONAL (*i.e.,* NON-ADVANCED) PORTION OF THE TOTAL RENEWABLE FUEL STANDARDS IN 2017

	2016	2017
Implied Conventional Volume Required (Million Gallons)	14,500	14,800
Annual Change in Implied Conventional Volume Required (Million Gallons) (GGE)[53]		300 *(200)*
Cost Difference Between Corn Ethanol and Gasoline Per Gallon ($/GGE)		$1.22—$1.44
Annual Increase in Overall Costs (Million $)		[54] $245—$288

2017 advanced biofuel RFS volume. Illustrative costs represent meeting all of the costs of the annual increase of the 2017 advanced standard using entirely soybean-based biodiesel as one scenario.

[49] Due to the difference in energy content between biodiesel and diesel, one gallon of biodiesel is energy-equivalent to approximately 91% of a gallon of diesel; 260 million gallons of biodiesel is energy-equivalent to approximately 238 million gallons of diesel.

[50] Overall costs may not match per gallon costs times volumes due to rounding.

[51] Due to the difference in energy content between ethanol and gasoline, one gallon of ethanol is energy-equivalent to approximately 67% of a gallon of gasoline; 390 million gallons of ethanol is energy-equivalent to approximately 260 million gallons of gasoline.

[52] Overall costs may not match per gallon costs times volumes due to rounding.

These illustrative cost estimates are not meant to be precise measures, nor do they attempt to capture the full impacts of the rule. These estimates are provided solely for the purpose of illustrating how the cost to produce renewable fuels could compare to the costs of producing petroleum fuels. There are several important caveats that must be considered when interpreting these costs estimates. First, there is a significant amount of heterogeneity in the costs associated with different feedstocks and fuels that could be used to produce renewable fuels; however, EPA did not attempt to capture this range of potential costs in these illustrative estimates. Second, EPA did not quantify other impacts such as infrastructure costs, job impacts, or investment impacts. If the illustrative costs from the Tables above, representing the range for combined advanced and non-advanced fuel volumes, were summed together they would range from $535—$971 million in 2017. It is important to note that these costs do not represent net benefits of the program.

For the purpose of this annual rulemaking, we have not quantified benefits for the 2017 proposed standards. We do not have a quantified estimate of the GHG impacts for a single year (*e.g.*, 2017), and there are a number of benefits that are difficult to quantify, such as rural economic development, job creation, and national security benefits from more diversified fuel sources. When the RFS program is fully phased in, the program will result in considerable volumes of renewable fuels that will reduce GHG emissions in comparison to the fossil fuels which they replace. EPA estimated GHG, energy security, and air quality impacts and benefits in the 2010 RFS2 final rule assuming full implementation of the statutory volumes in 2022.[55]

Through the RFS program, EPA is creating a sustained market signal to incentivize low greenhouse gas renewable fuels, especially for advanced biofuels. This should provide a way to reduce GHG emissions in future years as the market for renewable fuels develops further.

III. Cellulosic Biofuel Volume for 2017

In the past several years the cellulosic biofuel industry has continued to make progress towards significant commercial-scale production. Cellulosic biofuel production reached record levels in 2015, driven largely by compressed natural gas (CNG) and liquefied natural gas (LNG) derived from biogas.[56] Cellulosic ethanol, while produced in much smaller quantities than CNG/LNG derived from biogas, was also produced consistently in 2015. Plans for multiple commercial scale facilities capable of producing drop-in hydrocarbon fuels from cellulosic biomass were also announced. This section describes our proposed assessment of the volume of cellulosic biofuel that we project will be produced or imported into the United States in 2017, and some of the uncertainties associated with those volumes.

In order to project the volume of cellulosic biofuel production in 2017 we considered data reported to EPA through the EPA Moderated Transaction System (EMTS) and information we collected regarding individual facilities that have produced or have the potential to produce qualifying volumes for consumption as transportation fuel, heating oil, or jet fuel in the U.S. in 2017. At this time, EPA has not received projections of cellulosic biofuel production in 2017 from the EIA, however we anticipate considering these estimates, together with updated information regarding the potential for contributions from individual facilities and groups of facilities, in determining the projected volume of cellulosic biofuel production in 2017 for the final rule.

New cellulosic biofuel production facilities projected to be brought online in the United States over the next few years would significantly increase the production capacity of the cellulosic industry. Operational experience gained at the first few commercial scale cellulosic biofuel production facilities should also lead to increasing production of cellulosic biofuel from existing production facilities. The following section discusses the companies the EPA reviewed in the process of projecting qualifying cellulosic biofuel production in the United States in 2017. Information on these companies forms the basis for our production projections of cellulosic biofuel that will be produced for use as transportation fuel, heating oil, or jet fuel in the United States. We are proposing a cellulosic biofuel volume requirement of 312 million gallons for 2017. We request comment on this projected volume of cellulosic biofuel production, as well as the methodology used to project these volumes.

A. Statutory Requirements

The volumes of renewable fuel to be used under the RFS program each year (absent an adjustment or waiver by EPA) are specified in CAA section 211(o)(2). The volume of cellulosic biofuel specified in the statute for 2017 is 5.5 billion gallons. The statute provides that if EPA determines, based on EIA's estimate, that the projected volume of cellulosic biofuel production in a given year is less than the statutory volume, then EPA is to reduce the applicable volume of cellulosic biofuel to the projected volume available during that calendar year.[57]

In addition, if EPA reduces the required volume of cellulosic biofuel below the level specified in the statute, the Act also indicates that we may reduce the applicable volumes of advanced biofuels and total renewable fuel by the same or a lesser volume, and we are required to make cellulosic waiver credits available. Our consideration of the 2017 volume requirements for advanced biofuel and total renewable fuel is presented in Section II.

B. Cellulosic Biofuel Industry Assessment

In order to project cellulosic biofuel production for 2017, we have tracked the progress of several dozen potential cellulosic biofuel production facilities. As we have done in previous years, we have focused on facilities with the potential to produce commercial-scale volumes of cellulosic biofuel rather than small R&D or pilot-scale facilities. Larger commercial-scale facilities are much more likely to generate RINs for the fuel they produce and the volumes they produce will have a far greater impact on the cellulosic biofuel standards for 2017. The volume of cellulosic biofuel produced from R&D and pilot-scale facilities is quite small in relation to that expected from the commercial-scale facilities. R&D and demonstration-scale facilities have also generally not generated RINs for the fuel they have produced in the past. Their focus is on developing and

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[53] 300 million gallons of ethanol is energy-equivalent to approximately 200 million gallons of gasoline.

[54] Overall costs may not match per gallon costs times volumes due to rounding.

[55] 75 FR 14670, March 26, 2010.

[56] The majority of the cellulosic RINs generated for CNG/LNG are sourced from biogas from landfills, however the biogas may come from a variety of sources including municipal wastewater treatment facility digesters, agricultural digesters, separated MSW digesters, and the cellulosic components of biomass processed in other waste digesters.

[57] The United States Court of Appeals for the District of Columbia Circuit evaluated this requirement in *API* v. *EPA*, 706 F.3d 474, 479–480 (D.C. Cir. 2013), in the context of a challenge to the 2012 cellulosic biofuel standard. The Court stated that in projecting potentially available volumes of cellulosic biofuel EPA must apply an "outcome-neutral methodology" aimed at providing a prediction of "what will actually happen."

demonstrating the technology, not producing commercial volumes, and RIN generation from R&D and pilot-scale facilities in previous years has not contributed significantly to the overall number of cellulosic RINs generated.

From this list of commercial-scale facilities we used information from EMTS, publically available information (including press releases and news reports), and information provided by representatives of potential cellulosic biofuel producers, to make a determination of which facilities are most likely to produce cellulosic biofuel and generate cellulosic biofuel RINs in 2017. Each of these companies was investigated further in order to determine the current status of its facilities and its likely cellulosic biofuel production and RIN generation volumes for 2017. Both in our discussions with representatives of individual companies [58] and as part of our internal evaluation process we gathered and analyzed information including, but not limited to, the funding status of these facilities, current status of the production technologies, anticipated construction and production ramp-up periods, facility registration status, and annual fuel production and RIN generation targets.

Our proposed approach for projecting the available volume of cellulosic biofuel in 2017 is discussed in more detail in Section III.C below. The proposed approach is very similar to the approach adopted in establishing the required volume of cellulosic biofuel in 2016.[59] The remainder of this Section discusses the companies and facilities EPA expects may be in a position to produce commercial-scale volumes of cellulosic biofuel by the end of 2017. This information, together with the reported cellulosic biofuel RIN generation in previous years in EMTS, forms the basis for our proposed volume requirement for cellulosic biofuel for 2017.

1. Potential Domestic Producers

There are a number of companies and facilities [60] located in the United States that have either already begun producing cellulosic biofuel for use as transportation fuel, heating oil, or jet fuel at a commercial scale, or are anticipated to be in a position to do so by the end of 2017. The financial incentive provided by cellulosic biofuel RINs, combined with the facts that to date nearly all cellulosic biofuel produced in the United States has been used domestically [61] and all the domestic facilities we have contacted in deriving our projections intend to produce fuel on a commercial scale for domestic consumption using approved pathways, gives us a high degree of confidence that cellulosic biofuel RINs will be generated for any fuel produced. In order to generate RINs, each of these facilities must be registered under the RFS program and comply with all the regulatory requirements. This includes using an approved RIN-generating pathway and verifying that their feedstocks meet the definition of renewable biomass. Most of the companies and facilities have already successfully completed facility registration, and many have successfully generated RINs. A brief description of each of the companies (or group of companies for cellulosic CNG/LNG producers) that EPA believes may produce commercial-scale volumes of RIN generating cellulosic biofuel by the end of 2017 can be found in a memorandum to the docket for this proposed rule.[62] These descriptions are based on a review of publicly available information and in many cases on information provided to EPA in conversations with company representatives. General information on each of these companies or group of companies considered in our projection of the potentially available volume of cellulosic biofuel in 2017 is summarized in Table III.B.3–1 below.

2. Potential Foreign Sources of Cellulosic Biofuel

In addition to the potential sources of cellulosic biofuel located in the United States, there are several foreign cellulosic biofuel companies that may produce cellulosic biofuel in 2017. These include facilities owned and operated by Beta Renewables, Enerkem, Ensyn, GranBio, and Raizen. All of these facilities use fuel production pathways that have been approved by EPA for cellulosic RIN generation provided eligible sources of renewable feedstock are used. These companies would therefore be eligible to register these facilities under the RFS program and generate RINs for any qualifying fuel imported into the United States. While these facilities may be able to generate RINs for any volumes of cellulosic biofuel they import into the United States, demand for the cellulosic biofuels they produce is expected to be high in local markets.

EPA is charged with projecting the volume of cellulosic biofuel that will be produced or imported into the United States. For the purposes of this proposed rule we have considered all of the companies who have registered foreign facilities under the RFS program to be potential sources of cellulosic biofuel in 2017. We believe that due to the strong demand for cellulosic biofuel in local markets, the significant technical challenges associated with the operation of cellulosic biofuel facilities, and the time necessary for potential foreign cellulosic biofuel producers to register under the RFS program and arrange for the importation of cellulosic biofuel to the United States, cellulosic biofuel imports from facilities not currently registered to generate cellulosic biofuel RINs are highly unlikely in 2017. We have therefore only considered foreign cellulosic biofuel production from facilities that are currently registered in our projection of available volume of cellulosic biofuel in 2017. Two foreign facilities that have registered as cellulosic biofuel producers have already generated cellulosic biofuel RINs for fuel exported to the United States; projected volumes from each of these facilities are included in our projection of available volumes for 2017. Two additional foreign facilities have registered as a cellulosic biofuel producer, but has not yet generated any cellulosic RINs. EPA contacted representatives from these facilities and to inquire about their intentions to export cellulosic biofuel to the United States in 2017. In cases where the companies indicated they intended to export cellulosic biofuel to the United States, EPA has included potential volumes from this facility in our 2017 volume production projection (see Table III.B.3–1 below).

3. Summary of Volume Projections for Individual Companies

The information we have gathered on cellulosic biofuel producers forms the basis for our projected volumes of cellulosic biofuel production for each facility in 2017. As discussed above, we have focused on commercial-scale cellulosic biofuel production facilities.

By 2017 there are a number of cellulosic biofuel production facilities that have the potential to produce fuel at commercial scale. Each of these facilities is discussed further in a memorandum to the docket.[63]

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[58] In determining appropriate volumes for CNG/LNG producers we generally did not contact individual producers but rather relied primarily on discussions with industry associations, and information on likely production facilities that are already registered under the RFS program. In some cases where further information was needed we did speak with individual companies.

[59] See 80 FR 77420, 77499 (December 14, 2015).

[60] The volume projection from CNG/LNG producers does not represent production from a single company or facility, but rather a group of facilities utilizing the same production technology.

[61] The only known exception was a small volume of fuel produced at a demonstration scale facility exported to be used for promotional purposes.

[62] "Cellulosic Biofuel Producer Company Descriptions (April 2016)", memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2016–0004.

TABLE III.B.3–1—PROJECTED PRODUCERS OF CELLULOSIC BIOFUEL BY 2017

Company name	Location	Feedstock	Fuel	Facility capacity (MGY)[64]	Construction start date	First production[65]
CNG/LNG Producers[66].	Various (US and Canada).	Biogas	CNG/LNG	Various	N/A	August 2014.
DuPont	Nevada, IA	Corn Stover	Ethanol	30	November 2012	Late 2016.
Edeniq	Various	Corn Kernel Fiber	Ethanol	Various	Various	Summer 2016.
Ensyn	Renfrew, ON, Canada.	Wood Waste	Heating Oil	3	N/A	2014.
GranBio	São Miguel dos Campos, Brazil.	Sugarcane bagasse.	Ethanol	21	Mid 2012	September 2014.
Poet	Emmetsburg, IA	Corn Stover	Ethanol	24	March 2012	4Q 2015.
QCCP	Galva, IA	Corn Kernel Fiber	Ethanol	2	Late 2013	October 2014.

C. Proposed Cellulosic Biofuel Volume for 2017

To project the volume of potentially available cellulosic biofuel in 2017 we are proposing to use the same methodology used to project the available volume of cellulosic biofuel in the final rule establishing the cellulosic biofuel volume standard for 2016.[67] To project cellulosic biofuel production in 2017 we separated the list of potential producers of cellulosic biofuel into four groups according to whether they are producing liquid cellulosic biofuel or CNG/LNG from biogas, and whether or not the facilities have achieved consistent commercial-scale production and cellulosic biofuel RIN generation (See Table III.C–1 through Table III.C–3). We next defined a range of likely production volumes for each group of potential cellulosic biofuel producers. The low end of the range for each group of producers reflects actual RIN generation data over the last 12 months for which data are available. The low end of the range for companies that have not yet begun commercial-scale production (or in the case of CNG/LNG producers have not yet generated RINs for fuel sold as transportation fuel in the United States) is zero.

To calculate the high end of the projected production range for each group of companies we considered each company individually. To determine the high end of the range of expected production volumes for companies producing liquid cellulosic biofuel we considered a variety of factors, including the expected start-up date and ramp-up period, facility capacity, and fuel off-take agreements. As a starting point, EPA calculated a production volume for these facilities using the expected start-up date, facility capacity, and a benchmark of a six-month straight-line ramp-up period representing an optimistic ramp-up scenario.[68] Generally we used this calculated production volume as the high end of the potential production range for each company. The only exceptions were cases where companies provided us with production projections (or projections of the volume of fuel they expected to import into the United States in the case of foreign producers) that were lower than the volumes we calculated as the high end of the range for that particular company. In these cases, the projected production volume (or import volume) provided by the company was used as the high end of the potential production range rather than the volume calculated by EPA. For CNG/LNG producers, the high end of the range was generally equal to each company's projection for the number of RINs generated from each facility in 2017.[69] The high end of the ranges for all of the individual companies within each group were added together to calculate the high end of the projected production range for that group.

TABLE III.C–1—2017 PRODUCTION RANGES FOR LIQUID CELLULOSIC BIOFUEL PRODUCERS WITHOUT CONSISTENT COMMERCIAL SCALE PRODUCTION

[Million gallons]

	Low end of the range[a]	High end of the range[a]
DuPont	0	23
Edeniq	0	18

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[63] "Cellulosic Biofuel Producer Company Descriptions (April 2016)", memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2016–0004.

[64] The Facility Capacity is generally equal to the nameplate capacity provided to EPA by company representatives or found in publicly available information. If the facility has completed registration and the total permitted capacity is lower than the nameplate capacity then this lower volume is used as the facility capacity. For companies generating RINs for CNG/LNG derived from biogas the Facility Capacity is equal to the lower of the annualized rate of production of CNG/LNG from the facility or the sum of the volume of contracts in place for the sale of CNG/LNG for use as transportation fuel (reported as the actual peak capacity for these producers).

[65] Where a quarter is listed for the first production date EPA has assumed production begins in the middle month of the quarter (*i.e.,* August for the 3rd quarter) for the purposes of projecting volumes.

[66] For more information on these facilities see "April 2016 Assessment of Cellulosic Biofuel Production from Biogas (2017)", memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2016–0004.

[67] See 80 FR 77499 for additional detail.

[68] We did not assume a six-month straight-line ramp-up period in determining the high end of the projected production range for CNG/LNG producers. This is because these facilities generally have a history of CNG/LNG production prior to producing RINs, and therefore do not face many of the start-up and scale-up challenges that impact new facilities. For further information on the methodology used to project cellulosic RIN generation from CNG/LNG producers see "April 2016 Assessment of Cellulosic Biofuel Production from Biogas (2017)", memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2016–0004.

[69] For additional detail on the methods used to project cellulosic biofuel production for CNG/LNG producers see "April 2016 Assessment of Cellulosic Biofuel Production from Biogas (2017)", memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2016–0004.

TABLE III.C–1—2017 PRODUCTION RANGES FOR LIQUID CELLULOSIC BIOFUEL PRODUCERS WITHOUT CONSISTENT COMMERCIAL SCALE PRODUCTION—Continued

[Million gallons]

	Low end of the range [a]	High end of the range [a]
GranBio	0	5
Aggregate Range	0	46

[a] Rounded to the nearest million gallons.

TABLE III.C–2—2017 PRODUCTION RANGES FOR LIQUID CELLULOSIC BIOFUEL PRODUCERS WITH CONSISTENT COMMERCIAL SCALE PRODUCTION

[Million gallons]

	Low end of the range [a]	High end of the range [a]
Ensyn	[b] X	3
Poet	[b] X	24
Quad County Corn Processors	[b] X	5
Aggregate Range	3	32

[a] Rounded to the nearest million gallons.

[b] The low end of the range for each individual company is based on actual production volumes and is therefore withheld to protect information claimed to be confidential business information.

TABLE III.C–3—2017 PRODUCTION RANGES FOR CNG/LNG PRODUCED FROM BIOGAS

[Million gallons]

	Low end of the range [a]	High end of the range [a]
CNG/LNG Producers (New Facilities)	0	167
CNG/LNG Producers (Currently generating RINs)	148	217

[a] Rounded to the nearest million gallons.

After defining likely production ranges for each group of companies we projected a likely production volume from each group of companies for 2017. We used the same percentile values to project a proposed production volume within the established ranges for 2017 as we did in the final rule for 2016; the 50th and 25th percentiles respectively for liquid cellulosic biofuel producers with and without a history of consistent cellulosic biofuel production and RIN generation, and the 75th and 50th percentiles respectively for producers of CNG/LNG from biogas with and without a history of consistent commercial-scale production and RIN generation. As discussed in the final rule establishing the 2016 cellulosic biofuel standard, we believe these percentages appropriately reflect the uncertainties associated with each of these groups of companies.[70] We will continue to monitor how closely these percentile values reflect actual production for each group of companies and may adjust these percentiles if a change is supported by the available information. After calculating a likely production volume for each group of companies in 2017, the volumes from each group are added together to determine the total projected production volume of cellulosic biofuel in 2017.

TABLE III.C–4—PROJECTED VOLUME OF CELLULOSIC BIOFUEL IN 2017

[Million gallons]

	Low end of the range [a]	High end of the range [a]	Percentile	Projected volume [a]
Liquid Cellulosic Biofuel Producers; New Facilities	0	46	25th	12
Liquid Cellulosic Biofuel Producer; Consistent Production	3	32	50th	18
CNG/LNG Producers; New Facilities	0	167	50th	84
CNG/LNG Producers; Consistent Production	148	217	75th	200
Total	N/A	N/A	N/A	[b] 312

[a] Volumes rounded to the nearest million gallons.

[b] The total is 2 million gallons lower than the sum of the four components due to rounding.

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[70] For a further discussion of the percentile values used to projected likely production from each group of companies see 80 FR 77499.

We believe our range of projected production volumes for each company (or group of companies for cellulosic CNG/LNG producers) represents the range of what is likely to actually happen, and that projecting overall production in 2017 in the manner described above results in a neutral estimate (neither biased to produce a projection that is unreasonably high or low) of likely cellulosic biofuel production in 2017 (312 million gallons). A brief overview of individual companies we believe will produce cellulosic biofuel and make it commercially available in 2017 can be found in a memorandum to the docket.[71] In the case of cellulosic biofuel produced from CNG/LNG we have discussed the production potential from these facilities as a group rather than individually. EPA believes it is appropriate to discuss these facilities as a group since they are using a proven production technology and face many of the same challenges related to demonstrating that the fuel they produce is used as transportation fuel and therefore eligible to generate RINs under the RFS program.[72] We request comment on the methodology used to project cellulosic biofuel production in 2017, as well as on the group of companies listed as potential cellulosic biofuel producers and the volume of cellulosic biofuel projected to be produced in 2017.

IV. Biomass-Based Diesel Volume for 2018

In this section we discuss the proposed biomass-based diesel (BBD) applicable volumes for 2018. We are proposing this volume in advance of those for other renewable fuel categories in light of the statutory requirement in 211(o)(2)(B)(ii) to establish the applicable volume of BBD for years after 2012 no later than 14 months before the applicable volume will apply. We are not at this time proposing the BBD percentage standards that would apply to obligated parties in 2018 but intend to do so in the Fall of 2017, after receiving EIA's estimate of gasoline and diesel consumption for 2018. Although the BBD applicable volume would set a floor for required BBD use because the BBD volume requirement is nested within both the advanced biofuel and the total renewable fuel volume requirements, any "excess" BBD produced beyond the mandated BBD volume can be used to satisfy both of these other applicable volume requirements. Therefore, these other standards can also influence BBD production and use.

A. Statutory Requirements

The statute establishes applicable volume targets for years through 2022 for cellulosic biofuel, advanced biofuel, and total renewable fuel. For BBD, applicable volume targets are specified in the statute only through 2012. For years after those for which volumes are specified in the statute, EPA is required under CAA section 211(o)(2)(B)(ii) to determine the applicable volume of BBD, in coordination with the Secretary of Energy and the Secretary of Agriculture, based on a review of the implementation of the program during calendar years for which the statute specifies the volumes and an analysis of the following factors:

1. The impact of the production and use of renewable fuels on the environment, including on air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply;
2. The impact of renewable fuels on the energy security of the United States;
3. The expected annual rate of future commercial production of renewable fuels, including advanced biofuels in each category (cellulosic biofuel and BBD);
4. The impact of renewable fuels on the infrastructure of the United States, including deliverability of materials, goods, and products other than renewable fuel, and the sufficiency of infrastructure to deliver and use renewable fuel;
5. The impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods; and
6. The impact of the use of renewable fuels on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.

The statute also specifies that the volume requirement for BBD cannot be less than the applicable volume for calendar year 2012, which is 1.0 billion gallons. The statute does not, however, establish any other numeric criteria, or provide any guidance on how the EPA should weigh the importance of the often competing factors, and the overarching goals of the statute when the EPA sets the applicable volumes of BBD in years after those for which the statute specifies such volumes. In the period 2013–2022, the statute specifies increasing applicable volumes of cellulosic biofuel, advanced biofuel, and total renewable fuel, but provides no guidance, beyond the 1.0 billion gallon minimum, on the level at which BBD volumes should be set.

B. Determination of Applicable Volume of Biomass-Based Diesel

1. BBD Production and Compliance Through 2015

One of the primary considerations in determining the proposed biomass-based diesel volume for 2018 is a review of the implementation of the program to date, as it effects biomass-based diesel. This review is required by the CAA, and also provides insight into the capabilities of the industry to produce, import, export, and distribute BBD. It also helps us to understand what factors, beyond the BBD standard, may incentivize the production and import of BBD. The number of BBD RINs generated, along with the number of RINs retired due to export or for reasons other than compliance with the annual BBD standards from 2011–2015 are shown in Table IV.B.1–1 below.

TABLE IV.B.1–1—BIOMASS-BASED (D4) RIN GENERATION AND STANDARDS IN 2013–2017

[Million gallons] [73]

	BBD RINs generated	Exported BBD (RINs)	BBD RINs retired, non-compliance reasons	Available BBD RINs [a]	BBD standard (gallons)	BBD standard (RINs) [74]
2011	1,692	110	98	1,483	800	1,200
2012	1,737	183	90	1,465	1,000	1,500
2013	2,739	298	101	2,341	1,280	1,920

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[71] "Cellulosic Biofuel Producer Company Descriptions (April 2016)", memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2016–0004.

[72] For individual company information see "April 2016 Cellulosic Biofuel Individual Company Projections for 2017 (CBI)", memorandum from Dallas Burkholder to EPA Air Docket EPA–HQ–OAR–2016–0004.

TABLE IV.B.1–1—BIOMASS-BASED (D4) RIN GENERATION AND STANDARDS IN 2013–2017—Continued

[Million gallons][73]

	BBD RINs generated	Exported BBD (RINs)	BBD RINs retired, non-compliance reasons	Available BBD RINs[a]	BBD standard (gallons)	BBD standard (RINs)[74]
2014	2,710	126	92	2,492	1,630	[b]2,490
2015	2,796	133	32	2,631	1,730	[b]2,655
2016	N/A	N/A	N/A	N/A	1,900	2,850
2017	N/A	N/A	N/A	N/A	2,000	3,000

[a] Available BBD RINs may not be exactly equal to BBD RINs Generated minus Exported RINs and BBD RINs Retired, Non-Compliance Reasons due to rounding.

[b] Number is not exactly equal to 1.5 times the BBD volume standard as some of the volume used to meet the biomass-based diesel standard was renewable diesel, which generally has an equivalence value of 1.7.

In reviewing historical BBD RIN generation and use, we see that the number of RINs available for compliance purposes exceeded the volume required to meet the BBD standard in 2011 and 2013. Additional production and use of biodiesel was likely driven by a number of factors, including demand to satisfy the advanced biofuel and total renewable fuels standards, the biodiesel tax credit, and favorable blending economics. In 2012 the available BBD RINs were slightly less than the BBD standard. There are many reasons this may have been the case, including the temporary lapse of the biodiesel tax credit at the end of 2011.[75] The number of RINs available in 2014 and 2015 was approximately equal to the number required for compliance in those years. This is because the standards for these years were finalized at the end of November 2015 when RIN generation data were available for all of 2014 and much of 2015, and we exercised our authority to establish the required BBD volumes for these time periods to be approximately equal to the number of BBD RINs that were available (for past time periods) or were expected to be available (for the months of 2015 for which EPA did not yet have reliable data) in the absence of the influence of the RFS standards.

2. Interaction Between BBD and Advanced Biofuel Standards

The BBD standard is nested within the advanced biofuel and total renewable fuel standards. This means that when an obligated party retires a BBD RIN (D4) to satisfy their BBD obligation, this RIN also counts towards meeting their advanced biofuel and total renewable fuel obligations. It also means that obligated parties may use BBD RINs in excess of their BBD obligations to satisfy their advanced biofuel and total renewable fuel obligations. Higher advanced biofuel and total renewable fuel standards, therefore, create demand for BBD, especially if there is an insufficient supply of other advanced or conventional renewable fuels to satisfy the standards, or if BBD RINs can be acquired at or below the price of other advanced or conventional biofuel RINs.

In reviewing the implementation of the RFS program to date, it is apparent that the advanced and/or total renewable fuel requirements were in fact helping grow the market for volumes of biodiesel above the BBD standard. In 2013 the number of advanced RINs generated from fuels other than BBD was not large enough to satisfy the implied standard for "other advanced" biofuel (advanced biofuel needed to satisfy the advanced biofuel standard after the BBD and cellulosic biofuel standards are met), and additional volumes of BBD filled the gap (see Table IV.B.2–1 below). In fact, the amount by which the available BBD RINs exceeded the 1.28 billion gallon BBD volume requirement (421 million RINs) was larger than the amount of such excess BBD needed to satisfy the advanced biofuel standard (278 million RINs), suggesting that the additional increment was incentivized by the total renewable fuel standard. As discussed above, the 2014 and 2015 BBD standards were intended to reflect the full number of available BBD RINs in these years and were set in late 2015, at which point the number of available RINs in these years was largely known. We can therefore draw no conclusions about the ability for the advanced and total renewable fuel standards to incentivize BBD production from these years. While the available BBD RINs in 2012 were slightly less than the BBD standard despite the opportunity to contribute towards meeting the advanced and total renewable fuel standards, there are several factors beyond the RFS standards (2012 drought, expiration of the biodiesel tax credit, opportunities for increased ethanol blending as E10) that likely impacted BBD production in 2012. We continue to believe that the advanced biofuel and total renewable fuel standards can provide a strong incentive for increased BBD volume in the United States in excess of that required to satisfy the BBD standard (for further discussion on this issue see 80 FR 77492).

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[73] Net BBD RINs Generated and BBD RINs Retired for Non-Compliance Reasons information from EMTS. Biodiesel Export information from EIA.*http://www.eia.gov/dnav/pet/pet_move_expc_a_EPOORDB_EEX_mbbl_a.htm.*

[74] Each gallon of biodiesel qualifies for 1.5 RINs due to its higher energy content per gallon than ethanol. Renewable diesel qualifies for between 1.5 and 1.7 RINs per gallon.

[75] The biodiesel tax credit was reauthorized in January 2013. It applied retroactively for 2012 and for the remainder of 2013. It was once again extended in December 2014 and applied retroactively to all of 2014 as well as to the remaining weeks of 2014. In December 2015 the biodiesel tax credit was once authorized and applied retro-actively for all of 2015 as well as through the end of 2016.

TABLE IV.B.2–1—BIOMASS-BASED DIESEL AND ADVANCED BIOFUEL RIN GENERATION AND STANDARDS

[Million RINs]

	Available BBD (RINs)	BBD Standard (RINs)	Available D5 RINs (advanced biofuels)[a]	Opportunity for "other advanced" biofuels[b]
2011	1,483	1,200	225	150
2012	1,465	1,500	597	500
2013	2,341	1,920	552	830
2014	2,492	2,490	143	147
2015	2,631	2,655	147	102

[a] Does not include BBD or cellulosic biofuel RINs, which may also be used towards an obligated party's advanced biofuel obligation

[b] Advanced biofuel that does not qualify as BBD or cellulosic biofuel; calculated by subtracting the number of required BBD RINs (BBD required volume × 1.5) and the number of required cellulosic biofuel RINs from the Advanced Biofuel Standard

The prices paid for advanced biofuel and BBD RINs beginning in early 2013 through 2015 also support the conclusion that advanced biofuel and/or total renewable fuel standards provide a sufficient incentive for additional biodiesel volume beyond what is required by the BBD standard. Because the BBD standard is nested within the advanced biofuel and total renewable fuel standards, and therefore can help to satisfy three RVOs, we would expect the price of BBD RINs to exceed that of advanced and conventional renewable RINs.[76] If, however, BBD RINs are being used by obligated parties to satisfy their advanced biofuel and/or total renewable fuel obligations, above and beyond the BBD standard, we would expect the prices of conventional renewable fuel, advanced biofuel, and BBD RINs to converge to the price of the BBD RIN.[77] When examining RIN prices data from 2013 through 2015, shown in Figure IV.B.2–1 below, we see that throughout this entire time period the advanced RIN price and biomass-based diesel RIN prices were approximately equal. This suggests that the advanced biofuel standard and/or total renewable fuel standard was capable of incentivizing increased BBD volumes beyond the BBD standard in 2013.[78] While final standards were not in place throughout 2014 and most of 2015, EPA had issued proposed rules for both of these years. In each year, the market response was to supply volumes of BBD that exceeded the proposed BBD standard in order to satisfy the advanced biofuel standard. Additionally, the RIN prices in these years strongly suggests that obligated parties and other market participants anticipated the need for BBD RINs to meet their advanced biofuel obligations, and responded by purchasing advanced biofuel and BBD RINs at approximately equal prices.

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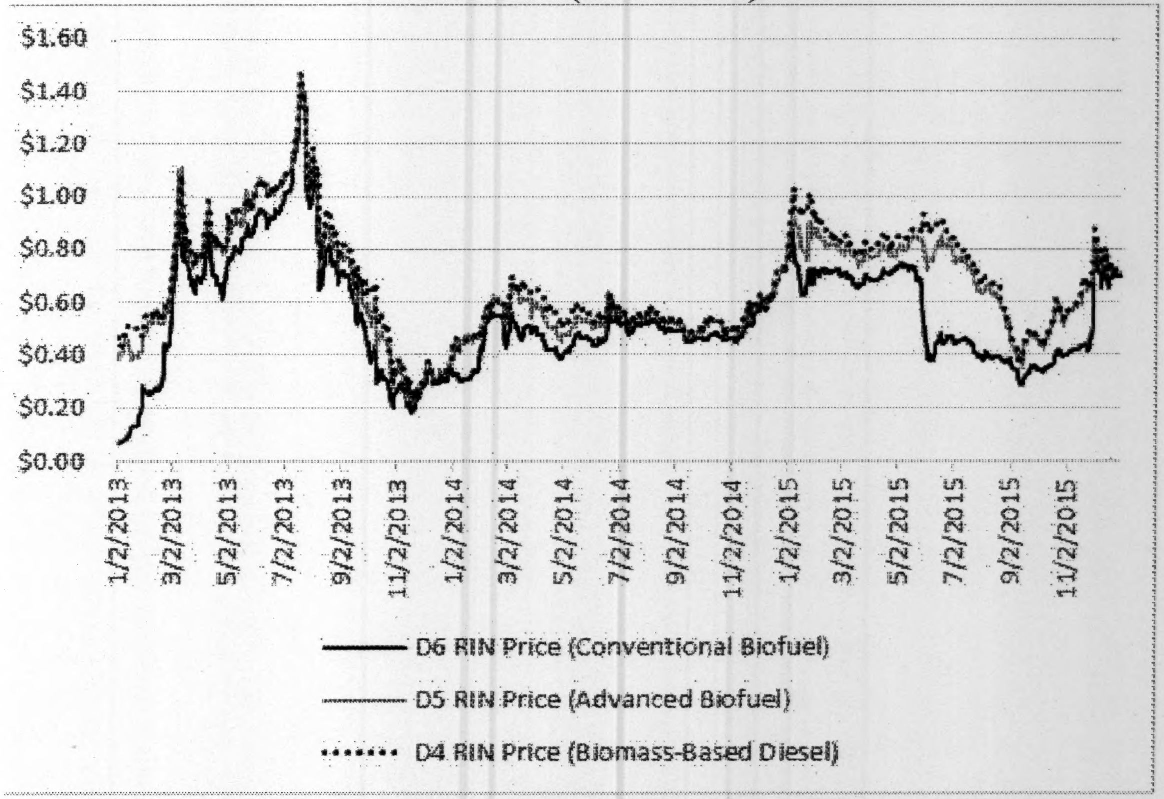
[76] This is because when an obligated party retires a BBD RIN to help satisfy their BBD obligation, the nested nature of the BBD standard means that this RIN also counts towards satisfying their advanced and total renewable fuel obligations. Advanced RINs count towards both the advanced and total renewable fuel obligations, while conventional RINs (D6) count towards only the total renewable fuel obligation.

[77] We would still expect D4 RINs to be valued at a slight premium to D5 and D6 RINs in this case (and D5 RINs at a slight premium to D6 RINs) to reflect the greater flexibility of the D4 RINs to be used towards the BBD, advanced biofuel, and total renewable fuel standard. This pricing has been observed over the past several years.

[78] Although we did not issue a rule establishing the final 2013 standards until August of 2013, we believe that the market anticipated the final standards, based on EPA's July 2011 proposal and the volume targets for advanced and total renewable fuel established in the statute. (76 Fed Reg 38844, 38843.)

Figure IV.B.2-1
RIN Prices (2013-2015)[a]



[a] For a list of the eligible pathways for each D-code see Table 1 to §80.1426

In establishing the BBD and cellulosic standards as nested within the advanced biofuel standard, Congress clearly intended to support development of BBD and cellulosic biofuels, while also providing an incentive for the growth of other non-specified types of advanced biofuels. That is, the advanced biofuel standard provides an opportunity for other advanced biofuels (advanced biofuels that do not qualify as cellulosic biofuel or BBD) to be used to satisfy the advanced biofuel standard after the cellulosic biofuel and BBD standards have been met. Indeed, since Congress specifically directed growth in BBD only through 2012, leaving development of volume targets for BBD to EPA for later years while also specifying substantial growth in the cellulosic biofuel and advanced biofuel categories, we believe that Congress clearly intended for EPA to evaluate in setting BBD volume requirements after 2012 the appropriate rate of participation of BBD within the advanced biofuel standard.

When viewed in a long-term perspective, BBD can be seen as competing for research and development dollars with other types of advanced biofuels for participation as advanced biofuels in the RFS program. We believe that preserving space within the advanced biofuel standard for advanced biofuels that do not qualify as BBD or cellulosic biofuel provides the appropriate incentives for the continued development of these types of fuels. In addition to the long-term impact of our action in establishing the BBD volume requirements, there is also the potential for short-term impacts during the compliance years in question. By proposing BBD volume requirements at levels lower than the advanced biofuel volume requirements (and lower than the expected production of BBD to satisfy the advanced biofuel requirement), we are proposing to continue to allow the potential for some competition between BBD and other advanced biofuels to satisfy the advanced biofuel volume standard. We continue to believe that preserving space under the advanced biofuel standard for non-BBD advanced biofuels, as well as BBD volumes in excess of the BBD standard, will help to encourage the development and production of a variety of advanced biofuels over the long term and without reducing the incentive for additional volumes of BBD beyond the BBD standard in 2017. A variety of different types of advanced biofuels, rather than a single type such as BBD, would positively impact energy security (*e.g.* by increasing the diversity of feedstock sources used to make biofuels, thereby reducing the impacts associated with a shortfall in a particular type of feedstock) and increase the likelihood of the development of lower cost advanced biofuels that meet the same GHG reduction threshold as BBD.[79]

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[79] All types of advanced biofuel, including biomass-based diesel and cellulosic biofuel, must achieve lifecycle greenhouse gas reductions of at least 50%.

While a single-minded focus on the ability of the advanced and total renewable fuel standards to incentivize increasing production of the lowest cost qualifying biofuels, regardless of fuel type, would suggest that a flat or even decreasing BBD volume requirement may be the optimal solution, this is not the only consideration. Despite many of these same issues being present in previous years, we have consistently increased the BBD standard each year. Our decisions to establish increasing BBD volumes each year have been made in light of the fact that while cellulosic biofuel production has fallen far short of the statutory volumes, the available supply of BBD in the United States has grown each year. This growing supply of BBD allowed EPA to establish higher advanced biofuel standards, and to realize the GHG benefits associated with greater volumes of advanced biofuel, than would otherwise have been possible in light of the continued shortfall in the availability of cellulosic biofuel. It is in this context that we determined that steadily increasing the BBD requirements was appropriate to encourage continued investment and innovation in the BBD industry, providing necessary assurances to the industry to increase production, while also serving the long term goal of the RFS statute to increase volumes of advanced biofuels over time.

Although the BBD industry has performed well in recent years, we believe that continued appropriate increases in the BBD volume requirement will help provide stability to the BBD industry and encourage continued growth. This industry is currently the single largest contributor to the advanced biofuel pool, one that to date has been largely responsible for providing the growth in advanced biofuels envisioned by Congress. Nevertheless, many factors that impact the viability of the BBD industry in the United States, such as commodity prices and the biodiesel tax credit, remain uncertain. Continuing to increase the BBD volume requirement should help to provide market conditions that allow these BBD production facilities to operate with greater certainty. This result is consistent with the goals of the Act to increase the production and use of advanced biofuels (for further discussion of these issues see 80 FR 77492).

3. Proposed BBD Volume for 2018

With the considerations discussed in Section IV.B.2 in mind, as well as our analysis of the factors specified in the statute, we are proposing the applicable volume of BBD at 2.1 billion gallons for 2018. This volume represents an annual increase of 100 million gallons over the applicable volume of BBD in 2017. We believe this is appropriate for the same reasons reflected in the December 14, 2015 final rule: To provide additional support for the BBD industry while allowing room within the advanced biofuel volume requirement for the participation of non-BBD advanced fuels. Although we are not proposing an advanced biofuel applicable volume for 2018 at this time, we anticipate that the 2018 advanced biofuel requirement will be larger than the proposed 2017 advanced biofuel volume requirement, and the proposed 2018 BBD volume requirement reflects this anticipated approach. Our assessment of the required statutory factors, summarized in the next section and in a memorandum to the docket, supports this proposal.[80]

We believe this proposal strikes the appropriate balance between providing a market environment where the development of other advanced biofuels is incentivized, while also maintaining support for growth in BBD volumes. Given the volumes for advanced biofuel we anticipate requiring in 2018, setting the BBD standard in this manner would continue to allow a considerable portion of the advanced biofuel volume to be satisfied by either additional gallons of BBD or by other unspecified types of qualifying advanced biofuels. We request comment on our proposal for increasing the BBD applicable volume in 2018 and whether a higher or lower volume requirement would be more appropriate.

C. Consideration of Statutory Factors for 2018

In this section we discuss our consideration of the statutory factors set forth in CAA section 211(o)(2)(B)(ii)(I)–(VI). As noted earlier in Section IV.B.2, the BBD volume requirement is nested within the advanced biofuel requirement and the advanced biofuel requirement is, in turn, nested within the total renewable fuel volume requirement. This means that any BBD produced beyond the mandated BBD volume can be used to satisfy both these other applicable volume requirements. The result is that in considering the statutory factors we must consider the potential impacts of increasing BBD in comparison to other advanced biofuels.[81] For a given advanced biofuel standard, greater or lesser applicable volumes of BBD do not change the amount of advanced biofuel used to displace petroleum fuels; rather, increasing the BBD applicable volume may result in the displacement of other types of advanced biofuels that could have been used to meet the advanced biofuels volume requirement.

EPA's primary assessment of the statutory factors for the proposed 2018 BBD applicable volume is that because the proposed BBD requirement is nested within the advanced biofuel volume requirement, we expect that the 2018 advanced volume requirement will largely determine the level of BBD production and imports; the same volume of BBD would likely be supplied regardless of the BBD volume that we require for 2018. This assessment is based, in part, on our review of the RFS program implementation to date, as discussed in Section IV.B.1. While we are not proposing the 2018 advanced biofuel volume requirement in this action, our proposal for the BBD volume requirement for 2018 is nevertheless not expected to impact the volume of BBD that is actually produced and imported during this time period. Thus we do not expect our decision to result in a difference in the factors we are required to consider pursuant to CAA section 211(o)(2)(B)(ii)(I)–(VI). However, we note that our proposed approach of setting BBD volume requirements at a higher level in 2018, while still at a volume level lower than anticipated overall production and consumption of BBD, is consistent with our evaluation of statutory factors 211(o)(2)(B)(ii) (I), (II) and (III), since we believe that our decision on the BBD volume requirement can have a positive impact on the future development and marketing of other advanced biofuels and can also result in potential environmental and energy security benefits, while still sending a supportive signal to potential BBD investors, consistent with the objectives of the Act to support the continued growth in production and use of renewable fuels.

Even though we are proposing only the 2018 BBD volume requirement at this time and not the 2018 advanced biofuel requirement, we believe that our primary assessment with respect to the 2018 BBD volume requirement is appropriate, as is clear from the fact that the reasoning and analysis would apply even if we did not increase the 2018 advanced biofuel requirement above 2017 levels.[82] Nevertheless, we anticipate that the 2018 advanced biofuel requirement will be set to reflect reasonably attainable volumes in the use of all advanced biofuels and that the advanced biofuel volume standard will be larger in 2018 than in 2017.

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[80] "Memorandum to docket: Draft Statutory Factors Assessment for the 2018 Biomass-Based Diesel (BBD) Applicable Volumes."

[81] While excess BBD production could also displace conventional biofuel under the total renewable standard, as long as the BBD applicable volume is lower than the advanced biofuel applicable volume our proposed action in setting the BBD applicable volume is not expected to displace conventional biofuels under the total renewable standard, but rather other advanced biofuels. See Table II.E–1.

As an additional supplementary assessment, we have considered the potential impacts of selecting an applicable volume of BBD other than 2.1 billion gallons in 2018 based on the assumption that in guaranteeing the BBD volume at any given level there could be greater use of BBD and a corresponding decrease in the use of other types of advanced biofuels. However, setting a BBD volume requirement higher or lower than 2.1 billion gallons in 2018 would only be expected to impact BBD volumes on the margin, protecting to a lesser or greater degree BBD from being outcompeted by other advanced biofuels. In this supplementary assessment we have considered all of the statutory factors found in CAA 211(2)(B)(ii), and as described in a memorandum to the docket,[83] our assessment does not appear, based on available information, to provide a reasonable basis for setting a higher or lower volume requirement for BBD than 2.1 billion gallons for 2018.

In proposing the 2018 advanced biofuel volume requirement, we have assumed reasonably attainable volumes of BBD and other advanced biofuels. After determining that it is in the interest of the goals of the program to propose a BBD volume requirement at a level below anticipated BBD production and imports, so as to provide continued incentives for research and development of alternative advanced biofuels, it is apparent that excess BBD above the BBD volume requirement will compete with other advanced biofuels, rather than petroleum based diesel.[84] The only way for our proposed BBD volume requirement to result in a direct displacement of petroleum-based fuels, rather than other advanced biofuels, would be if the BBD volume requirement were set larger than the total renewable fuel requirement. However, since BBD is a type of advanced biofuel, and advanced biofuel is a type of renewable fuel, the BBD volume requirement could never be larger than the advanced requirement and the advanced biofuel requirement could never be larger than the total renewable fuel requirement. Thus, EPA continues to believe that it is appropriate to evaluate the impact of its action in setting the BBD volume requirements by evaluating the impact of using BBD as compared to other advanced biofuels in satisfying the increment of the advanced biofuel standard that is not guaranteed to BBD.

Overall and as described in our memorandum to the docket, we have determined that both the primary assessment and the supplemental assessment of the statutory factors specified in CAA section 211(o)(2)(B)(ii)(I)–(VI) for the year 2018 does not provide significant support for setting the BBD standard at a level higher or lower than 2.1 billion gallons in 2018.

V. Percentage Standards for 2017

The renewable fuel standards are expressed as volume percentages and are used by each obligated party to determine their Renewable Volume Obligations (RVOs). Since there are four separate standards under the RFS program, there are likewise four separate RVOs applicable to each obligated party. Each standard applies to the sum of all non-renewable gasoline and diesel produced or imported. The percentage standards are set so that if every obligated party meets the percentages by acquiring and retiring an appropriate number of RINs, then the amount of renewable fuel, cellulosic biofuel, biomass-based diesel (BBD), and advanced biofuel used will meet the applicable volume requirements on a nationwide basis.

Sections II, III, and IV provide our rationale and basis for the proposed volume requirements for advanced biofuel and total renewable fuel, cellulosic biofuel, and BBD, respectively. The volumes used to determine the proposed percentage standards are shown in Table V–1.

TABLE V–1—PROPOSED VOLUMES FOR USE IN SETTING THE 2017 APPLICABLE PERCENTAGE STANDARDS

Cellulosic biofuel (million gallons)	312
Biomass-based diesel (billion gallons) [a]	2.0
Advanced biofuel (billion gallons)	4.0
Renewable fuel (billion gallons)	18.8

[a] Represents physical volume.

A. Calculation of Percentage Standards

The formulas used to calculate the percentage standards applicable to producers and importers of gasoline and diesel are provided in § 80.1405. The formulas rely on estimates of the volumes of gasoline and diesel fuel, for both highway and nonroad uses, which are projected to be used in the year in which the standards will apply. The projected gasoline and diesel volumes are provided by EIA, and include ethanol and biodiesel used in transportation fuel. Since the percentage standards apply only to the non-renewable gasoline and diesel produced or imported, the volumes of ethanol and biodiesel are subtracted out of the EIA projections of gasoline and diesel.

Transportation fuels other than gasoline or diesel, such as natural gas, propane, and electricity from fossil fuels, are not currently subject to the standards, and volumes of such fuels are not used in calculating the annual percentage standards. Since under the regulations the standards apply only to producers and importers of gasoline and diesel, these are the transportation fuels used to set the percentage standards, as well as to determine the annual volume obligations of an individual gasoline or diesel producer or importer.

As specified in the March 26, 2010 RFS2 final rule, the percentage standards are based on energy-equivalent gallons of renewable fuel, with the cellulosic biofuel, advanced biofuel, and total renewable fuel standards based on ethanol equivalence and the BBD standard based on biodiesel equivalence. However, all RIN generation is based on ethanol-equivalence. For example, the RFS regulations provide that production or import of a gallon of qualifying biodiesel will lead to the generation of 1.5 RINs. In order to ensure that demand for the required physical volume of BBD will be created in each year, the calculation of the BBD standard provides that the applicable physical volume be multiplied by 1.5. The net result is a BBD gallon being worth 1.0 gallon toward the BBD standard, but worth 1.5 gallons toward the other standards.

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[82] As explained in Section II, in deriving the proposed 2017 advanced biofuel applicable volume requirement, we assumed that 2.3 billion gallons of BBD (3.45 billion RINs) would be used to satisfy the proposed 4.00 bill gal advanced biofuel requirement. Thus the proposed 2018 BBD applicable volume is less than we anticipate will actually be used in 2017.

[83] "Memorandum to docket: Draft Statutory Factors Assessment for the 2018 Biomass-Based Diesel (BBD) Applicable Volumes."

[84] The possibility for competition between BBD and other types of advanced biofuels is not precluded by our setting the advanced biofuel requirement at a level that reflects reasonably attainable volumes of all advanced biofuel types, or by our setting the total renewable fuel applicable volume at a level that reflects that maximum reasonably achievable volume of all fuel types. Any of our estimates related to a particular fuel type could prove to be either an over or under estimate. We are confident that the sum of all individual estimates used in setting the applicable volumes are reasonable, and more accurate than our individual estimates for any particular fuel type. It is at the margin where our estimates regarding production and import of individual fuel types may be in error that competition between qualifying fuels can take place.

B. Small Refineries and Small Refiners

In CAA section 211(o)(9), enacted as part of the Energy Policy Act of 2005, and amended by the Energy Independence and Security Act of 2007, Congress provided a temporary exemption to small refineries[85] through December 31, 2010. Congress provided that small refineries could receive a temporary extension of the exemption beyond 2010 based either on the results of a required DOE study, or based on an EPA determination of "disproportionate economic hardship" on a case-by-case basis in response to small refinery petitions.[86] In reviewing petitions, EPA, in consultation with the Department of Energy, evaluates the impacts petitioning refineries would likely face in achieving compliance with the RFS requirements and how compliance would affect their ability to remain competitive and profitable.

EPA has granted some exemptions pursuant to this process in the past. However, at this time, no exemptions have been approved for 2017, and therefore we have calculated the proposed percentage standards for this year without an adjustment for exempted volumes. Any requests for exemptions for 2017 that are approved prior to the final rule will be reflected in the relevant standards in the final rule, as provided in the formulas described in the preceding section. As stated in the final rule establishing the 2011 standards, "EPA believes the Act is best interpreted to require issuance of a single annual standard in November that is applicable in the following calendar year, thereby providing advance notice and certainty to obligated parties regarding their regulatory requirements. Periodic revisions to the standards to reflect waivers issued to small refineries or refiners would be inconsistent with the statutory text, and would introduce an undesirable level of uncertainty for obligated parties."[87] Thus, any exemptions for small refineries that are issued after the release of the final 2017 standards will not affect those standards.

C. Proposed Standards

The formulas in § 80.1405 for the calculation of the percentage standards require the specification of a total of 14 variables covering factors such as the renewable fuel volume requirements, projected gasoline and diesel demand for all states and territories where the RFS program applies, renewable fuels projected by EIA to be included in the gasoline and diesel demand, and exemptions for small refineries. The values of all the variables used for this proposal are shown in Table V.C–1.[88]

TABLE V.C–1—VALUES FOR TERMS IN CALCULATION OF THE PROPOSED 2017 STANDARDS[89]

[Billion gallons]

Term	Description	Value
RFV_{CB}	Required volume of cellulosic biofuel	0.312
RFV_{BBD}	Required volume of biomass-based diesel	2.0
RFV_{AB}	Required volume of advanced biofuel	4.0
RFV_{RF}	Required volume of renewable fuel	18.8
G	Projected volume of gasoline	142.05
D	Projected volume of diesel	54.58
RG	Projected volume of renewables in gasoline	14.21
RD	Projected volume of renewables in diesel	2.35
GS	Projected volume of gasoline for opt-in areas	0
RGS	Projected volume of renewables in gasoline for opt-in areas	0
DS	Projected volume of diesel for opt-in areas	0
RDS	Projected volume of renewables in diesel for opt-in areas	0
GE	Projected volume of gasoline for exempt small refineries	0.00
DE	Projected volume of diesel for exempt small refineries	0.00

Projected volumes of gasoline and diesel, and the renewable fuels contained within them, were derived from the April, 2016 version of EIA's Short-Term Energy Outlook (STEO). These projections reflect EIA's judgment of future demand volumes in 2017, accounting for the low oil price environment in early 2016.

Using the volumes shown in Table V.C–1, we have calculated the proposed percentage standards for 2017 as shown in Table V.C–2.

TABLE V.C–2—PROPOSED PERCENTAGE STANDARDS FOR 2017

Cellulosic biofuel	0.173
Biomass-based diesel	1.67
Advanced biofuel	2.22
Renewable fuel	10.44

VI. Public Participation

We request comment on all aspects of this proposal. This section describes how you can participate in this process.

A. How Do I Submit Comments?

We are opening a formal comment period by publishing this document. We will accept comments during the period indicated under the **DATES** section above. If you have an interest in the proposed standards, we encourage you to comment on any aspect of this rulemaking. We also request comment on specific topics identified throughout this proposal.

Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. Commenters are especially encouraged to provide specific suggestions for any changes that they believe need to be made. You should send all comments, except those containing proprietary information, to our Docket (see **ADDRESSES** section above) by the end of the comment period.

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[85] A small refiner that meets the requirements of 40 CFR 80.1442 may also be eligible for an exemption.

[86] For 2011 and 2012, 13 small refineries were granted an extension to the statutory exemption based on the findings of a Department of Energy investigation into the disproportionate economic hardship experienced by small refineries.

[87] See 75 FR 76804 (December 9, 2010).

[88] To determine the 49-state values for gasoline and diesel, the amounts of these fuels used in Alaska is subtracted from the totals provided by DOE. The Alaska fractions are determined from the June 24, 2015 EIA State Energy Data System (SEDS), Energy Consumption Estimates.

[89] See "Calculation of proposed % standards for 2017" in docket EPA–HQ–OAR–2016–0004.

You may submit comments electronically through the electronic public docket, *www.regulations.gov*, by mail to the address shown in **ADDRESSES**, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit Confidential Business Information (CBI) or information that is otherwise protected by statute, please follow the instructions in Section VI.B below.

B. How should I submit CBI to the agency?

Do not submit information that you consider to be CBI electronically through the electronic public docket, *www.regulations.gov*, or by email. Send or deliver information identified as CBI only to the following address: U.S. Environmental Protection Agency, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI, 48105, Attention Docket ID EPA–HQ–OAR–2016–0004. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comments that include any information claimed as CBI, a copy of the comments that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. This non-CBI version of your comments may be submitted electronically, by mail, or through hand delivery/courier. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of illustrative costs associated with this action. This analysis is presented in Section II.F of this preamble.

B. Paperwork Reduction Act (PRA)

This proposed action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2060–0637 and 2060–0640. The proposed standards would not impose new or different reporting requirements on regulated parties than already exist for the RFS program.

C. Regulatory Flexibility Act (RFA)

I certify that this proposed action would not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule.

The small entities directly regulated by the RFS program are small refiners, which are defined at 13 CFR 121.201. We have evaluated the impacts of this proposal on small entities from two perspectives; as if the proposed 2017 standards were a standalone action or if they are a part of the overall impacts of the RFS program as a whole.

When evaluating the proposed standards as if they were a standalone action separate and apart from the original rulemaking which established the RFS2 program, then the proposed standards could be viewed as increasing the volumes required of obligated parties between 2016 and 2017. To evaluate the proposed rule from this perspective, EPA has conducted a screening analysis [90] to assess whether it should make a finding that this action would not have a significant economic impact on a substantial number of small entities. Currently-available information shows that the impact on small entities from implementation of this rule would not be significant. EPA has reviewed and assessed the available information, which suggests that obligated parties, including small entities, are generally able to recover the cost of acquiring the RINs necessary for compliance with the RFS standards through higher sales prices of the petroleum products they sell than would be expected in the absence of the RFS program.[91] [92] This is true whether they acquire RINs by purchasing renewable fuels with attached RINs or purchase separated RINs. Even if we were to assume that the cost of acquiring RINs were not recovered by obligated parties, and we used the maximum values of the illustrative costs discussed in Section II.F and the gasoline and diesel fuel volume projections and wholesale prices from the April 2016 version of EIA's Short-Term Energy Outlook, and current wholesale fuel prices, a cost-to-sales ratio test shows that the costs to small entities of the RFS standards are far less than 1% of the value of their sales.

While the screening analysis described above supports a certification that this proposed rule would not have a significant economic impact on small refiners, we continue to believe that it is more appropriate to consider the proposed standards as a part of, and ongoing implementation of the overall RFS program. When considered this way the impacts of the RFS program as a whole on small entities were addressed in the RFS2 final rule (75 FR 14670, March 26, 2010), which was a rule that implemented the entire program required by the Energy Independence and Security Act of 2007 (EISA 2007). As such, the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel process that took place prior to the 2010 rule was also for the entire RFS program and looked at impacts on small refiners through 2022.

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[90] "Screening Analysis for the Proposed Renewable Fuel Standard Program Renewable Volume Obligations for 2017", memorandum from Dallas Burkholder and Tia Sutton to EPA Air Docket EPA–HQ–OAR–2016–0004.

[91] For a further discussion of the ability of obligated parties to recover the cost of RINs see "A Preliminary Assessment of RIN Market Dynamics, RIN Prices, and Their Effects," Dallas Burkholder, Office of Transportation and Air Quality, US EPA. May 14, 2015, EPA Air Docket EPA–HQ–OAR–2015–0111.

[92] Knittel, Christopher R., Ben S. Meiselman, and James H. Stock. "The Pass-Through of RIN Prices to Wholesale and Retail Fuels under the Renewable Fuel Standard." Working Paper 21343. NBER Working Paper Series. Available online *http://www.nber.org/papers/w21343.pdf.*

For the SBREFA process for the RFS2 final rule, EPA conducted outreach, fact-finding, and analysis of the potential impacts of the program on small refiners which are all described in the Final Regulatory Flexibility Analysis, located in the rulemaking docket (EPA–HQ–OAR–2005–0161). This analysis looked at impacts to all refiners, including small refiners, through the year 2022 and found that the program would not have a significant economic impact on a substantial number of small entities, and that this impact was expected to decrease over time, even as the standards increased. The analysis included a cost-to-sales ratio test, a ratio of the estimated annualized compliance costs to the value of sales per company, for gasoline and/or diesel small refiners subject to the standards. From this test, it was estimated that all directly regulated small entities would have compliance costs that are less than one percent of their sales over the life of the program (75 FR 14862).

We have determined that this proposed rule would not impose any additional requirements on small entities beyond those already analyzed, since the impacts of this proposed rule are not greater or fundamentally different than those already considered in the analysis for the RFS2 final rule assuming full implementation of the RFS program. As shown above in Tables I–1 and I.A–1 (and discussed further in Sections II and III), this rule proposes the 2017 volume requirements for cellulosic biofuel, advanced biofuel, and total renewable fuel at levels significantly below the statutory volume targets. This exercise of EPA's waiver authorities reduces burdens on small entities, as compared to the burdens that would be imposed under the volumes specified in the Clean Air Act in the absence of waivers—which are the volumes that we assessed in the screening analysis that we prepared for implementation of the full program. Regarding the biomass-based diesel standard, we are proposing an increase in the volume requirement for 2018 over the statutory minimum value of 1 billion gallons. However, this is a nested standard within the advanced biofuel category, for which we are proposing significant reductions from the statutory volume targets. As discussed in Section IV, we are proposing to set the biomass-based diesel volume requirement at a level below what is anticipated will be produced and used to satisfy the reduced advanced biofuel requirement. The net result of the standards being proposed in this action is a reduction in burden as compared to implementation of the statutory volume targets, as was assumed in the RFS2 final rule analysis.

While the rule would not have a significant economic impact on a substantial number of small entities, there are compliance flexibilities in the program that can help to reduce impacts on small entities. These flexibilities include being able to comply through RIN trading rather than renewable fuel blending, 20% RIN rollover allowance (up to 20% of an obligated party's RVO can be met using previous-year RINs), and deficit carry forward (the ability to carry over a deficit from a given year into the following year, providing that the deficit is satisfied together with the next year's RVO). In the RFS2 final rule, we discussed other potential small entity flexibilities that had been suggested by the SBREFA panel or through comments, but we did not adopt them, in part because we had serious concerns regarding our authority to do so.

Additionally, as we realize that there may be cases in which a small entity experiences hardship beyond the level of assistance afforded by the program flexibilities, the program provides hardship relief provisions for small entities (small refiners), as well as for small refineries.[93] As required by the statute, the RFS regulations include a hardship relief provision (at 40 CFR 80.1441(e)(2)) which allows for a small refinery to petition for an extension of its small refinery exemption at any time based on a showing that compliance with the requirements of the RFS program would result in the refinery experiencing a "disproportionate economic hardship." EPA regulations provide similar relief to small refiners that are not eligible for small refinery relief. A small refiner may petition for a small refiner exemption based on a similar showing that compliance with the requirements of the RFS program would result in the refiner experiencing a "disproportionate economic hardship" (see 40 CFR 80.1442(h)). EPA evaluates these petitions on a case-by-case basis and may approve such petitions if it finds that a disproportionate economic hardship exists. In evaluating such petitions, EPA consults with the U.S. Department of Energy, and takes the findings of DOE's 2011 Small Refinery Study and other economic factors into consideration. For the 2013 RFS standards, EPA successfully implemented these provisions by evaluating 16 petitions for exemptions from small refineries (one was later withdrawn).

Given that this proposed rule would not impose additional requirements on small entities, would decrease burden via a reduction in required volumes as compared to statutory volume targets, would not change the compliance flexibilities currently offered to small entities under the RFS program (including the small refinery hardship provisions we continue to successfully implement), and available information shows that the impact on small entities from implementation of this rule would not be significant viewed either from the perspective of it being a standalone action or a part of the overall RFS program, we have therefore concluded that this action would have no net regulatory burden for directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This proposed action contains a federal mandate under UMRA, 2 U.S.C. 1531–1538, that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. Accordingly, the EPA has prepared a written statement required under section 202 of UMRA. The statement is discussed above in Section II.F. This action implements mandates specifically and explicitly set forth in CAA section 211(o) and we believe that this action represents the least costly, most cost-effective approach to achieve the statutory requirements of the rule.

This action is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed action does not have tribal implications as specified in Executive Order 13175. This proposed rule would be implemented at the Federal level and affects transportation fuel refiners, blenders, marketers, distributors, importers, exporters, and renewable fuel producers and importers.

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[93] See CAA section 211(o)(9)(B).

Tribal governments would be affected only to the extent they produce, purchase, and use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it implements specific standards established by Congress in statutes (CAA section 211(o)) and does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action proposes the required renewable fuel content of the transportation fuel supply for 2017, consistent with the CAA and waiver authorities provided therein. The RFS program and this rule are designed to achieve positive effects on the nation's transportation fuel supply, by increasing energy independence and lowering lifecycle greenhouse gas emissions of transportation fuel.

I. National Technology Transfer and Advancement Act (NTTAA)

This proposed rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations, and Low-Income Populations

The EPA believes that this proposed action would not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. This proposed rule does not affect the level of protection provided to human health or the environment by applicable air quality standards. This action does not relax the control measures on sources regulated by the RFS regulations and therefore would not cause emissions increases from these sources.

VIII. Statutory Authority

Statutory authority for this proposed action comes from section 211 of the Clean Air Act, 42 U.S.C. 7545. Additional support for the procedural and compliance related aspects of this final rule come from sections 114, 208, and 301(a) of the Clean Air Act, 42 U.S.C. 7414, 7542, and 7601(a).

List of Subjects in 40 CFR Part 80:

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Oil imports, Petroleum, Renewable fuel.

Dated: May 18, 2016.

Gina McCarthy,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 80 as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

Subpart M—[Amended]

■ 2. Section 80.1405 is amended by adding paragraph (a)(8) to read as follows:

§ 80.1405 What are the Renewable Fuel Standards?

(a) * * *

(8) *Renewable Fuel Standards for 2017.*

(i) The value of the cellulosic biofuel standard for 2017 shall be 0.173 percent.

(ii) The value of the biomass-based diesel standard for 2017 shall be 1.67 percent.

(iii) The value of the advanced biofuel standard for 2017 shall be 2.22 percent.

(iv) The value of the renewable fuel standard for 2017 shall be 10.44 percent.

* * * * *

[FR Doc. 2016–12369 Filed 5–27–16; 8:45 am]

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Part VI

Commodity Futures Trading Commission

17 CFR Part 23

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements; Agency Information Collection Activities: Proposed Collection, Comment Request: Final Rule, Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements; Final Rule and Notice

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AC97

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: On January 6, 2016, the Commodity Futures Trading Commission (“Commission” or “CFTC”) published final regulations to implement section 4s(e) of the Commodity Exchange Act, which requires the Commission to adopt initial and variation margin requirements for uncleared swaps of swap dealers and major swap participants that do not have a Prudential Regulator (collectively, “Covered Swap Entities” or “CSEs”). In this release, the Commission is adopting a rule to address the cross-border application of the Commission’s margin requirements for CSEs’ uncleared swaps.

DATES: The final rule is effective August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Laura B. Badian, Assistant General Counsel, 202–418–5969, *lbadian@cftc.gov*; Paul Schlichting, Assistant General Counsel, 202–418–5884, *pschlichting@cftc.gov*; or Elise (Pallais) Bruntel, Counsel, (202) 418–5577, *ebruntel@cftc.gov*; Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

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I. Background

A. Introduction

In the wake of the 2008 financial crisis, Congress enacted Title VII of the Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”),[1] which modified the Commodity Exchange Act (“CEA”)[2] to establish a comprehensive regulatory framework for swaps. A cornerstone of this framework is the reduction of systemic risk to the U.S. financial system through the establishment of margin requirements for uncleared swaps. CEA section 4s(e), added by section 731 of the Dodd-Frank Act, directs the Commission to adopt rules establishing minimum initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization (“DCO”).[3] To offset the greater risk to the swap dealer or major swap participant and the financial system arising from the use of uncleared swaps, the Commission’s margin requirements must (i) help ensure the safety and soundness of the swap dealer or major swap participant, and (ii) be appropriate for the risk associated with the uncleared swaps held as a swap dealer or major swap participant.[4] Under CEA section 4s(e), the Commission’s margin requirements apply to each swap dealer or major swap participant for which there is no Prudential Regulator (collectively, “Covered Swap Entities” or “CSEs”).[5] The Commission published final margin requirements for CSEs in January 2016.[6]

In July 2015, consistent with its authority in CEA sections 4s(e) and 2(i),[7] the Commission proposed a rule to address the cross-border application of the Commission’s margin requirements (the “proposed rule”).[8] The proposed rule set out the circumstances under which a CSE would be allowed to satisfy the Commission’s margin requirements by complying with comparable foreign margin requirements

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[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] 7 U.S.C. 1 *et seq.*

[3] *See* 7 U.S.C. 6s(e)(2)(B)(ii).

[4] 7 U.S.C. 6s(e)(3)(A).

[5] *See* 7 U.S.C. 6s(e)(1)(B). Swap dealers and major swap participants for which there is a Prudential Regulator must meet the margin requirements for uncleared swaps established by the applicable Prudential Regulator. 7 U.S.C. 6s(e)(1)(A). *See also* 7 U.S.C. 1a(39) (defining the term “Prudential Regulator” to include the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency). The Prudential Regulators published final margin requirements in November 2015. *See* Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015) (“Prudential Regulators’ Final Margin Rule”).

[6] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016) (the “Final Margin Rule”). The Final Margin Rule, which became effective April 1, 2016, is codified in part 23 of the Commission’s regulations. *See* 17 CFR 23.150–159, 161.

[7] *See* 7 U.S.C. 2(i). Section 2(i) of the CEA states that the provisions of the CEA relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities (1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or (2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Wall Street Transparency and Accountability Act of 2010.

[8] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 80 FR 41376 (July 14, 2015) (“Proposal”).

("substituted compliance"); offered certain CSEs a limited exclusion from the Commission's margin requirements (the "Exclusion"); and outlined a framework for assessing whether a foreign jurisdiction's margin requirements are comparable to the Commission's requirements ("comparability determinations"). The Commission developed the proposed rule after close consultation with the Prudential Regulators and in light of comments from and discussions with market participants and foreign regulators.[9]

The Commission requested comment on all aspects of the proposed rule. After a careful review of the comments,[10] the Commission is adopting a final rule largely as proposed but with some modifications, as described below (the "Final Rule").[11]

B. Key Considerations in the Cross-Border Application of the Margin Regulations

The overarching objective of the cross-border margin framework is to further the congressional mandate to ensure the safety and soundness of CSEs in order to offset the greater risk to CSEs and the financial system arising from the use of swaps that are not cleared.[12] Margin's primary function is to protect a CSE from counterparty default, allowing it to absorb losses and continue to meet its obligations using collateral provided by the defaulting counterparty.[13] While the requirement to post margin protects the counterparty in the event of the CSE's default, it also functions as a risk management tool, limiting the amount of leverage a CSE can incur by requiring that it have adequate eligible collateral to enter into an uncleared swap. In this way, margin serves as a first line of defense not only in protecting the CSE but in containing the amount of risk in the financial system as a whole, reducing the potential for contagion arising from uncleared swaps.[14]

The Commission recognizes that, to achieve the goals of the Dodd-Frank Act, its cross-border framework must take into account the global state of the swap market. The nature of modern financial markets means that risk is not static or contained by geographic boundaries. Market participants engage in swaps on a 24-hour basis in global markets, and many financial entities operate through a complex web of branches, subsidiaries, and affiliates that are scattered across the globe.[15] These branches and affiliated entities are highly interdependent, sharing not only information technology and operational support but risk management, treasury, and custodial functions. Risks from a swap entered into by an affiliated entity in one jurisdiction may be transferred to another affiliate in a different jurisdiction through inter-affiliate transactions. As part of their risk management practices, swap dealers also commonly lay off the risk of client-facing swaps in the interdealer market, which, as a result of consolidation among global financial institutions, has become concentrated among a relatively small number of dealers.[16] These developments, along with others, have led to a highly interconnected global swap market, where risks originating in one jurisdiction and entity are easily transferred to other jurisdictions and entities, increasing the possibility of cascading defaults.

As the 2008 financial crisis illustrated, the global nature of the swap market heightens the potential that risks assumed by a firm overseas stemming from its uncleared swaps can be transmitted across national borders to cause or contribute to substantial losses to U.S. persons and threaten the stability of the entire U.S. financial system. Complex financial and operational relationships among domestic and international affiliates, including guarantees from U.S. entities at entities like American International Group (AIG) and Lehman Brothers Holding Inc., demonstrated how the transfer of risk across multinational affiliated entities, including risk associated with swaps, is not always transparent and can be difficult to fully assess. More recent events, including major losses from J.P. Morgan Chase &

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[9] In 2014, in conjunction with reproposing its margin requirements, the Commission requested comment on three alternative approaches to the cross-border application of its margin requirements: (i) A transaction-level approach consistent with the Commission's guidance on the cross-border application of the CEA's swap provisions, *see* Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 FR 45292 (July 26, 2013) ("Guidance"); (ii) an approach consistent with the Prudential Regulators' proposed cross-border framework for margin, *see* Margin and Capital Requirements for Covered Swap Entities, 79 FR 57348 (Sept. 24, 2014) ("Prudential Regulators' Proposed Margin Rule"); and (iii) an entity-level approach that would apply margin rules on a firm-wide basis (without any exclusion for swaps with non-U.S. counterparties). *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 79 FR 59898 (Oct. 3, 2014) ("Proposed Margin Rule"). Following a review of comments received in response to this release, the Commission's Global Markets Advisory Committee ("GMAC") hosted a public panel discussion on the cross-border application of margin requirements.

[10] The Commission received eighteen comment letters in response to the Proposal: Alternative Investment Management Association and Investment Association (Sept. 11, 2015) ("AIMA/IA"); American Bankers Association and ABA Securities Association (Sept. 14, 2015) ("ABA/ABASA"); American Council of Life Insurers (Sept. 14, 2015) ("ACLI"); Americans for Financial Reform (Sept. 14, 2015) ("AFR"); Chris Barnard (Sept. 14, 2015) ("Barnard"); Better Markets, Inc. (Sept. 14, 2015) ("Better Markets"); Financial Services Roundtable (Sept. 14, 2015) ("FSR"); FMS-Wertmanagement (Sept. 14, 2015) ("FMS–WM"); Institute for Agriculture and Trade Policy (Sept. 14, 2015) ("IATP"); Investment Company Institute Global (Sept. 14, 2015) ("ICI Global"); International Swaps and Derivatives Association, Inc. (Sept. 11, 2015) ("ISDA"); Institute of International Bankers and Securities Industry and Financial Markets Association (Sept. 14, 2015) ("IIB/SIFMA"); Japanese Bankers Association (Sept. 13, 2015) ("JBA"); LCH.Clearnet Group Ltd. (Sept. 14, 2015) ("LCH.Clearnet"); Managed Funds Association (Sept. 14, 2015) ("MFA"); PensionsEurope (Sept. 14, 2015) ("PensionsEurope"); Asset Management Group of the Securities Industry and Financial Markets Association (Sept. 14, 2015) ("SIFMA AMG"); and Vanguard (Sept. 14, 2015) ("Vanguard"). The comment file is available at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1600.*

[11] The Final Rule is codified at 17 CFR 23.160.

[12] *See* 7 U.S.C. 6s(e)(3)(A).

[13] *See* Proposal, 80 FR at 41377.

[14] Although margin and capital are, by design, complementary, they serve equally important but different risk mitigation functions. Unlike margin, capital is difficult to rapidly adjust in response to changing risk exposures. Capital therefore can be viewed as a backstop in the event that margin is insufficient to cover losses resulting from a counterparty default. The Commission proposed capital rules in 2011. *See* Capital Requirements for Swap Dealers and Major Swap Participants, 76 FR 27802 (May 12, 2011) ("Proposed Capital Rule"). The Commission intends to repropose capital rules later this year.

[15] The largest U.S. banks have somewhere between 2,000 to 3,000 affiliated global entities, hundreds of which are based in the Cayman Islands. Data from the National Information Center (NIC), a repository of financial data and institutional characteristics of banks and other entities regulated by the Federal Reserve, show the increasing complexity of U.S. banks' foreign operations. *See* NIC, available at *http://www.ffiec.gov/nicpubweb/nicweb/nichome.aspx.* For instance, in 1990, there were 1,300 foreign nonbank subsidiaries in the database; at the end of 2014, there were more than 6,000. Foreign ownership is also highly concentrated in a few large firms: Goldman Sachs and Morgan Stanley own more than 2,000 foreign nonbank subsidiaries and, together with General Electric, own 63 percent of all foreign bank subsidiaries. Citigroup, JPMorgan Chase, and Bank of America account for 75 percent of all foreign branches.

[16] According to the Quarterly Report on Bank Trading and Derivatives Activities issued by the Office of the Comptroller of the Currency (OCC) for the second quarter of 2015, the notional value of derivative contracts held by insured U.S. commercial banks and savings associations was $197.9 trillion. *See* Office of the Comptroller of the Currency, Quarterly Report on Bank Trading and Derivatives Activities Second Quarter 2015, 1 (2015), available at *http://www.occ.gov/topics/capital-markets/financial-markets/trading/derivatives/dq215.pdf.* At the same time, four large commercial banks with the most derivatives activity—Goldman Sachs, JPMorgan Chase Bank NA, Citibank, and Bank of America NA—held 91.1% of the notional amount of these derivatives contracts. *Id.* at 11, 16. Contracts for swaps specifically accounted for $117.5 trillion of the $197.9 trillion total notional. *Id.* at 16.

Co.'s "London Whale" or the near failure of FCXM Inc. following trading losses at its London and Singapore affiliates, illustrate the continued potential for cross-border activities to have a significant impact on U.S. entities and markets.

The global nature of the swap market, coupled with the interconnectedness of market participants, also necessitate that the Commission recognize the supervisory interests of foreign regulatory authorities and consider the impact of its choices on market efficiency and competition, which are vital to a well-functioning global swap market.[17] Foreign jurisdictions are at various stages of implementing margin reforms. To the extent that other jurisdictions adopt requirements with different coverage or timelines, the Commission's margin requirements may lead to competitive burdens for U.S. entities and deter non-U.S. persons from transacting with U.S. CSEs and their affiliates overseas. The Commission's substituted compliance regime—a central element of the Final Rule—is intended to address these concerns without compromising the congressional mandate to protect the safety and soundness of CSEs and the stability of the U.S. financial system.

Substituted compliance has long been a central element of the Commission's cross-border policy.[18] It is an approach that recognizes that market participants in a globalized swap market are subject to multiple regulators and potentially face duplicative or conflicting regulations. Under the Final Rule's substituted compliance regime, the Commission would, under certain circumstances, allow a CSE to satisfy the Commission's margin requirements by instead complying with the margin requirements in the relevant foreign jurisdiction. Substituted compliance helps preserve the benefits of an integrated, global swap market by reducing the degree to which market participants will be subject to multiple sets of regulations. Further, substituted compliance encourages collaboration and coordination among U.S. and foreign regulators in establishing robust regulatory standards for the global swap market.

The Commission is mindful of the challenges involved in implementing a substituted compliance framework for margin. If implemented properly, substituted compliance has the potential to enhance market efficiency and liquidity and foster global coordination of margin requirements without compromising the safety and soundness of CSEs and the U.S. financial system. However, if substituted compliance were extended to foreign jurisdictions that do not have adequate oversight or protections with regard to uncleared swaps, the effectiveness of the Commission's margin requirements could be undermined, importing additional risk into the financial system. The Commission therefore believes that close coordination with its foreign counterparts is essential to ensuring that the benefits of substituted compliance are achieved.

Consistent with the congressional mandate to coordinate rules "to the maximum extent practicable," [19] in developing the Final Rule, Commission staff worked closely with staff of the Prudential Regulators to align the Final Rule with the cross-border framework in the Prudential Regulators' Final Margin Rule.[20] Aligning with the Prudential Regulators' cross-border margin rule is particularly important given the composition of the global swap market.[21] Currently, approximately 106 swap dealers and major swap participants are provisionally registered with the Commission. Of those entities, an estimated 54 are CSEs subject to the Commission's margin rules, with the remaining 52 entities falling within the scope of the Prudential Regulators' margin rules. Of the 54 CSEs subject to the Commission's margin requirements, approximately 33 CSEs are affiliated with a prudentially-regulated swap entity. Therefore, substantial differences between the Commission's and Prudential Regulators' cross-border regulations could lead to competitive disparities between affiliates within the same corporate structure, leading to market inefficiencies and incentives to restructure their businesses in order to avoid the more stringent cross-border margin framework.

In granting the Commission new authority over swaps under the Dodd-Frank Act, Congress also called for coordination and cooperation with foreign regulatory authorities.[22] Consistent with that mandate, and building on international efforts to develop a global margin framework,[23] the Commission closely consulted with its foreign counterparts in developing the Final Rule. As other jurisdictions finalize their margin rules and the Commission implements its cross-border margin framework, the Commission is committed to continuing to coordinate with foreign regulators, with a view toward mitigating any conflicting or otherwise substantially divergent margin requirements for uncleared swaps across jurisdictions.

II. The Final Rule

The Commission is adopting rules regarding how the Commission's margin requirements will apply to cross-border uncleared swaps. Broadly speaking, the final cross-border framework is designed to address the risks to a CSE, as an entity, associated with its uncleared swaps, consistent with CEA section 2(i) [24] and the statutory objectives of the margin requirements. As discussed above, section 4s(e) was enacted to address the risks to CSEs and to the U.S. financial system arising from uncleared swaps. The source of risk to a CSE is not confined to its uncleared swaps with U.S. counterparties or to swaps transacted within the United States. Risk arising from uncleared swaps involving non-U.S. counterparties can potentially have a substantial adverse effect on a CSE and therefore the stability of the U.S. financial system. Nevertheless, certain categories of uncleared swaps will be eligible for substituted compliance or the Exclusion based on the Commission's consideration of comity principles and the impact of the Final Rule on market efficiency and competition.

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[17] In determining the extent to which the Dodd-Frank swap provisions apply to activities overseas, the Commission strives to protect U.S. interests, as determined by Congress in Title VII, and minimize conflicts with the laws of other jurisdictions, consistent with principles of international comity. *See* Guidance, 78 FR at 45300–01 (referencing the Restatement (Third) of Foreign Relations Law of the United States).

[18] For example, under part 30 of the Commission's regulations, if the Commission determines that the foreign regulatory regime would offer comparable protection to U.S. customers transacting in foreign futures and options and there is an appropriate information-sharing arrangement between the home supervisor and the Commission, the Commission has permitted foreign brokers to comply with their home regulations (in lieu of the applicable Commission regulations), subject to appropriate conditions. *See, e.g.*, Foreign Futures and Options Transactions, 67 FR 30785 (May 8, 2002); Foreign Futures and Options Transactions, 71 FR 6759 (Feb. 9, 2006).

[19] *See* 7 U.S.C. 6s(e)(3)(D)(ii).

[20] *See* Prudential Regulators' Final Margin Rule, 80 FR 74840. The cross-border provision is section ___.9 of the Prudential Regulators' Final Margin Rule and is substantially similar to the Commission's Final Rule.

[21] The Securities and Exchange Commission ("SEC") has not yet finalized similar rules imposing margin requirements for security-based swap dealers and major security-based swap participants. The SEC proposed its margin rule in October 2012. *See* Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers, 77 FR 70214 (Nov. 23, 2012).

[22] 15 U.S.C. 8325(a) (added by section 752 of the Dodd-Frank Act).

[23] In October 2011, the Basel Committee on Banking Supervision ("BCBS") and the International Organization of Securities Commissions ("IOSCO"), in consultation with the Committee on Payment and Settlement Systems ("CPSS") and the Committee on Global Financial Systems ("CGFS"), formed a Working Group on Margining Requirements ("WGMR") to develop international standards for margin requirements for uncleared swaps. Representatives of 26 regulatory authorities participated, including the Commission. In September 2013, the WGMR published a final report articulating eight key principles for non-cleared derivatives margin rules. These principles represent the minimum standards approved by BCBS and IOSCO and their recommendations to the regulatory authorities in member jurisdictions. *See* BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (updated March 2015) ("BCBS/IOSCO framework"), available at *http://www.bis.org/bcbs/publ/d317.pdf.*

[24] *See* 7 U.S.C. 2(i).

The sections that follow summarize, as appropriate, the approach taken in the proposed rule, the comments received in response, and the resulting Final Rule. Section A discusses certain key definitions ("U.S. person," "guarantee," and "Foreign Consolidated Subsidiary" or "FCS") in the Final Rule, which inform how the Commission's margin requirements apply to market participants in the cross-border context. Section B describes the cross-border application of the Commission's margin requirements, including the circumstances under which substituted compliance and the limited Exclusion are available and the application of two special provisions designed to accommodate swap activities in jurisdictions that do not have a legal framework to support custodial arrangements and netting in compliance with the Final Margin Rule ("non-segregation jurisdictions"[25] and "non-netting jurisdictions," respectively).[26] Section C describes the Commission's framework for issuing comparability determinations.

As a preliminary matter, the Commission notes that several commenters requested Commission action outside the scope of the Final Rule, including modifications to the substantive margin requirements[27] or the Guidance.[28] The Commission notes that concerns regarding the general nature and application of the initial and variation margin requirements were addressed in the Final Margin Rule. Notably, the Final Margin Rule included substantial modifications from the Proposed Margin Rule that further aligned the Commission's margin requirements with the BCBS–IOSCO framework, which should further reduce the potential for conflicts with the margin requirements of foreign jurisdictions.[29] With respect to the Guidance, the Commission reiterates its intention to periodically review its cross-border policy in light of future developments, including its experience following adoption of the Final Rule.[30]

Commenters also requested that the Commission delay the cross-border application of its margin rules until after it has made comparability determinations.[31] Although the Commission declines to establish an open-ended delay in applying its margin rules, it remains committed to coordinating with foreign regulators to implement its cross-border margin framework in a workable manner.

A. Key Definitions

The extent to which substituted compliance and the Exclusion are available depends on whether the relevant swap involves a U.S. person, a guarantee by a U.S. person, or a "Foreign Consolidated Subsidiary" (or "FCS"). The Final Rule adopts definitions of "U.S. person," "guarantee," and "Foreign Consolidated Subsidiary" solely for purposes of the margin rules. These definitions are discussed below.

1. U.S. Person

Under the Final Rule, the term "U.S. person" is defined to include individuals or entities whose activities have a significant nexus to the U.S. market as a result of their being domiciled or organized in the United States or by virtue of the strength of their connection to the U.S. markets, even if they are domiciled or organized outside the United States. As discussed in section II.B.2.b.i. below, U.S. CSEs[32] are generally subject to the margin rules with only partial substituted compliance and are not eligible for the Exclusion.

a. Proposed Rule

In the proposed rule, the term "U.S. person" was defined to mean the following:

- Any natural person who is a resident of the United States (proposed § 23.160(a)(10)(i));
- Any estate of a decedent who was a resident of the United States at the time of death (proposed § 23.160(a)(10)(ii));
- Any corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of entity similar to any of the foregoing (other than an entity as described in paragraph (a)(10)(iv) or (v) of proposed § 23.160) (a legal entity), in each case that is organized or incorporated under the laws of the United States or that has its principal place of business in the United States, including any branch of

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[25] As used in this release, a "non-segregation jurisdiction" is a jurisdiction where inherent limitations in the legal or operational infrastructure of the foreign jurisdiction make it impracticable for the CSE and its counterparty to post initial margin pursuant to custodial arrangements that comply with the Final Margin Rule, as further described in section II.B.4.b.

[26] As used in this release, a "non-netting jurisdiction" is a jurisdiction in which a CSE cannot conclude, with a well-founded basis, that the netting agreement with a counterparty in that foreign jurisdiction meets the definition of an "eligible master netting agreement" set forth in the Final Margin Rule, as described in section II.B.5.b.

[27] See, *e.g.*, ACLI at 2–3 (Commission should defer to International Standards with respect to acceptable forms of collateral for margin); FMS–WM at 1–2 (legacy portfolio entity backed by full faith and credit of sovereign government should be considered a "sovereign entity" within scope of Commission's margin requirements); ISDA at 14–15 (inter-affiliate swaps should be exempt from initial margin requirements and accounting standards to determine consolidation should be applied throughout margin rules); JBA at 6 (Commission should work with foreign counterparts to harmonize aspects of its margin rules, including treatment of "legacy trades," inter-affiliate trades, and forms of eligible collateral); LCH.Clearnet at 4 (differences in approach to margin requirements between cleared and uncleared swaps should promote central clearing).

[28] *See, e.g.*, AFR at 2 (adopting cross-border approach to margin alone would create "serious problems"); AIMA/IA at 4 (Commission should amend Guidance to include U.S. person definition in the proposed rule); Better Markets at 6 (adopting cross-border approach to margin alone would be "a disservice to the comprehensive existing Guidance;" should instead make "targeted, limited changes" to Guidance); ICI Global at 7–8 (one U.S. person definition should apply consistently with respect to cross-border application of all swap requirements); IIB/SIFMA at 17–19 (proposed U.S. person and guarantee definitions should replace corresponding interpretations in Guidance); ISDA at 12 (same); JBA at 11–12 (same); SIFMA AMG at 4, 9–13 (same); Vanguard at 5 (same).

[29] For example, the Final Margin Rule raised the material swaps exposure level from $3 billion to the BCBS–IOSCO standard of $8 billion, which reduces the number of entities that must collect and post initial margin. *See* Final Margin Rule, 81 FR at 644. In addition, the definition of uncleared swaps was broadened to include DCOs that are not registered with the Commission but pursuant to Commission orders are permitted to clear for U.S. persons. *See id.* at 638.

[30] *See* Guidance, 78 FR at 45297. *See also United States* v. *Edge Broadcasting Co.*, 509 U.S. 418, 434 (1993) ("[A]n agency does not have to make progress on every front before it can make progress on any front."). *See also Personal Watercraft Indus. Ass'n* v. *Dep't of Commerce*, 48 F.3d 540, 544 (D.C. Cir. 1995).

[31] *See, e.g.*, ABA/ABASA at 3 ("sufficient time" for foreign jurisdictions to adopt margin rules); AIMA/IA at 3 ("sufficient time" to reach agreement with foreign counterparts); ISDA at 16–17 (12 months after margin rules are finalized in U.S., EU, and Japan, or two-year "transitional comparability determination," providing substituted compliance for all foreign jurisdictions that adopt rules based on BCBS–IOSCO framework, while Commission undertakes comparability analysis); JBA at 3, 4 (at least 18 months after margin rules are finalized in the U.S., EU, and Japan); PensionsEurope at 3 (12–18 months); SIFMA AMG at 4, 14–15 (at least 18 months).

[32] *See* 17 CFR 23.160(a)(8) (defining "U.S. CSE" as a CSE that is a "U.S. person," as defined in the Final Rule). *See also* 17 CFR 23.160(a)(4) (defining "non-U.S. CSE" as a CSE that is not a U.S. person).

the legal entity (proposed § 23.160(a)(10)(iii));

- Any pension plan for the employees, officers or principals of a legal entity as described in paragraph (a)(10)(iii) of proposed § 23.160, unless the pension plan is primarily for foreign employees of such an entity (proposed § 23.160(a)(10)(iv));
- Any trust governed by the laws of a state or other jurisdiction in the United States, if a court within the United States is able to exercise primary supervision over the administration of the trust (proposed § 23.160(a)(10)(v));
- Any legal entity (other than a limited liability company, limited liability partnership or similar entity where all of the owners of the entity have limited liability) owned by one or more persons described in paragraphs (a)(10)(i) through (v) of proposed § 23.160 who bear(s) unlimited responsibility for the obligations and liabilities of the legal entity, including any branch of the legal entity (proposed § 23.160(a)(10)(vi)); and
- Any individual account or joint account (discretionary or not) where the beneficial owner (or one of the beneficial owners in the case of a joint account) is a person described in paragraphs (a)(10)(i) through (vi) of proposed § 23.160 (proposed § 23.160(a)(10)(vii)).[33]

The Commission explained that, as indicated in paragraphs (iii) and (vi) of the proposed rule, a legal entity's status as a U.S. person would be determined at the entity level and would therefore include a foreign branch of a U.S. person.[34] An affiliate or subsidiary of a U.S. person that is organized or incorporated outside the United States, however, would not be deemed a "U.S. person" solely by virtue of its affiliation with the U.S. person.[35] The Commission also stated that a swap counterparty should generally be permitted to reasonably rely on its counterparty's written representation with regard to its status as a U.S. person.[36]

The proposed rule was generally consistent with the U.S. person interpretation set forth in the Guidance, with certain exceptions.[37] Notably, the proposed rule did not define "U.S. person" to include a commodity pool, pooled account, investment fund, or other collective investment vehicle that is majority-owned by one or more U.S. persons (the "U.S. majority-owned fund prong").[38] The proposed rule also did not include a catchall provision, thereby limiting the definition of "U.S. person" for purposes of the margin rule to persons enumerated in the rule.[39] Finally, paragraph (vi) of the proposed rule (the "unlimited U.S. responsibility prong") represented a modified version of a similar concept from the Guidance, which interprets "U.S. person" to include a legal entity "directly or indirectly majority-owned" by one or more U.S. person(s) that bear unlimited responsibility for the legal entity's liabilities and obligations.[40]

The Commission requested comment on all aspects of the proposed definition of "U.S person," including whether the definition should include a U.S. majority-owned fund prong or an unlimited U.S. responsibility prong and whether it should be identical to the U.S. person definition adopted by the SEC.[41]

b. Comments

In general, commenters raised few objections to the proposed "U.S. person" definition. Nearly all commenters supported the absence of a U.S. majority-owned fund prong,[42] and several expressly supported the absence of a catchall provision.[43] With respect to the U.S. majority-owned funds prong, commenters argued that U.S. ownership alone is not indicative of whether a fund's activities have a direct and significant effect on the U.S. financial system[44] and that identifying and tracking a fund's beneficial ownership may pose a significant challenge in certain circumstances.[45] Commenters added that characterizing such U.S. majority-owned funds as U.S. persons may lead to duplicative margin requirements because such funds will likely also be subject to foreign regulation.[46]

A few commenters, however, requested changes regarding the unlimited U.S. responsibility prong. ISDA and JBA recommended that, consistent with the Guidance, the Commission require that the U.S. person(s) bearing unlimited responsibility for the obligations and liabilities of the legal entity have a majority ownership stake in the entity. ISDA argued broadly that, to avoid confusion and regulatory overlap, legal entities that have multiple owners with unlimited liability for the obligations and liabilities of the legal entity should only be subject to the jurisdiction of the majority owner.[47] JBA argued that the definition should be consistent with the Guidance in order to avoid the possibility that the Commission's margin requirements would apply to a "broader scope of U.S. persons relative to other swap regulations."[48] IIB/SIFMA requested that the unlimited U.S. responsibility prong be removed altogether, arguing that unlimited responsibility is "largely equivalent" to a guarantee and should therefore be afforded the same treatment.[49]

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[33] *See* proposed 17 CFR 23.160(a)(10). *See also* proposed 17 CFR 23.160(a)(5) (defining "non-U.S. person" as any person that is not a "U.S. person").

[34] *See* Proposal, 80 FR at 41383 (stating that the definition includes any foreign operations that are part of the U.S. legal person, regardless of their location); proposed 17 CFR 23.160 (a)(10)(iii), (vi) (defining such U.S. persons to include "any branch of the legal entity").

[35] *See* Proposal, 80 FR at 41383 (explaining that the status of a legal person as a U.S. person would not affect whether a separately incorporated or organized legal person in the affiliated corporate group is a U.S. person).

[36] *See id.* (recognizing that the information necessary to accurately assess a counterparty's U.S. person status may be available only through overly burdensome due diligence).

[37] *See* Proposal, 80 FR at 41382–84. *See also* Guidance, 78 FR at 45308–17 (setting forth the interpretation of "U.S. person" for purposes of the Guidance).

[38] *See* Proposal, 80 FR at 41383. *See also* Guidance, 78 FR 45313–14 (discussing the U.S. majority-ownership prong for purposes of the Guidance). The Guidance interpreted "majority-owned" in this context to mean the beneficial ownership of more than 50 percent of the equity or voting interests in the collective investment vehicle. *See id.* at 45314.

[39] *See* Proposal, 80 FR at 41383. *See also* Guidance, 78 FR at 45316 (discussing the inclusion of the prefatory phrase "include, but not be limited to" in the interpretation of "U.S. person" in the Guidance).

[40] *See* Proposal, 80 FR at 41383. *See also* Guidance, 78 FR at 45312–13 (discussing the unlimited U.S. responsibility prong for purposes of the Guidance).

[41] *See* Proposal, 80 FR at 41384. *See also* 17 CFR 240.3a71–3(a)(4) (setting forth the definition of "U.S. person" adopted by the SEC for purposes of security-based swap regulation).

[42] *See e.g.,* AIMA/IA at 3–4; FSR at 2, 8; IATP at 4; IIB/SIFMA at 18; ISDA at 12; JBA at 11; MFA at 3, 5–6; SIFMA AMG at 10, Vanguard at 5.

[43] *See e.g.,* IIB/SIFMA at 17; ISDA at 12 (the absence the prefatory phrase "includes, but is not limited to" would "increase legal certainty"); SIFMA AMG at 10–11.

[44] *See e.g.,* AIMA/IA at 3; FSR at 8; IATP at 4; IIB/SIFMA at 18 (fund owners are not direct counterparties to swap and their risk of loss is limited to extent of their investment in the fund); MFA at 6.

[45] *See e.g.,* AIMA/IA at 3–4 (highlighting challenges presented by nominee accounts); IATP at 4 (ownership can be complex and variable over the life of a fund); IIB/SIFMA at 18 (highlighting challenges associated with funds formed before adoption of Guidance); SIFMA AMG at 10. *But see* MFA at 5–6 (funds organized or having a principal place of business in the United States are properly included in the U.S. person definition).

[46] *See* AIMA/IA at 4 ("comparable foreign rules" will apply to limit the likelihood and impact of a counterparty default); FSR at 8 (neither SEC nor EU regulators have proposed exercising jurisdiction over an entity on the basis of majority control); ISDA at 12 (neither BCBS–IOSCO framework nor proposed EU rules impose rules on funds based on jurisdiction of its owners).

[47] *See* ISDA at 12.

[48] *See* JBA at 11–12.

[49] *See* IIB/SIFMA at 17–18 (while guarantor may have legal defenses to enforcement of guarantee, both U.S. guarantee and unlimited U.S.

Commenters also made certain other recommendations to further conform the U.S. person definition to the interpretation of "U.S. person" in the Guidance.[50] ICI Global, SIFMA AMG, and Vanguard requested that the Commission confirm that, as indicated in the Guidance, a pool, fund or other collective investment vehicle that is publicly offered only to non-U.S. persons and not offered to U.S. persons would not fall within the scope of the U.S. person definition.[51] SIFMA AMG also added that language in paragraphs (iii) and (vi) specifying that a legal entity deemed a U.S. person would include "any branch of the legal entity" was unnecessarily confusing.[52]

Finally, FSR and JBA requested that, in the interest of harmonizing margin requirements and reducing compliance costs, the Commission should, consistent with the SEC's cross-border rules, exclude from the U.S. person definition certain designated international organizations.[53] IATP argued, however, that such exclusion would be either unnecessary or inappropriate.[54]

c. Final Rule

The Final Rule defines "U.S. person" as proposed, but the Commission is providing some additional clarifications in response to commenters. As stated in the Proposal, the definition generally follows a traditional, territorial approach to defining a U.S. person, and the Commission believes that this definition offers a clear, objective basis for determining those individuals or entities that should be identified as U.S. persons.

Under the Final Rule, a legal person's status as a U.S. person is determined at the entity level and therefore includes any foreign operations that are part of the legal person, regardless of their location. Consistent with this approach, the definition includes any foreign branch of a U.S. person.[55] The status of a legal entity as a U.S. person would not generally affect whether a separately incorporated or organized legal entity in the affiliated corporate group is a U.S. person. Therefore, an affiliate or a subsidiary of a U.S. person that is organized or incorporated in a non-U.S. jurisdiction would not be deemed a U.S. person solely by virtue of being affiliated with a U.S. person.[56]

Sections 23.160(a)(10)(i) through (v) and (vii) of the Final Rule identify certain persons as U.S. persons by virtue of being domiciled or organized in the United States. The Commission has traditionally looked to where a legal entity is organized or incorporated (or, in the case of a natural person, where he or she resides) to determine whether it is a U.S. person.[57] Persons domiciled or organized in the United States are likely to have significant financial and legal relationships in the United States and are therefore appropriately included within the definition of "U.S. person."

Consistent with this traditional approach, section 23.160(a)(10)(iii) of the Final Rule includes persons that are organized or incorporated outside the United States but have their principal place of business in the United States. For purposes of this section, the Commission interprets "principal place of business" to mean the location from which the officers, partners, or managers of the legal person primarily direct, control, and coordinate the activities of the legal person. This interpretation is consistent with the Supreme Court's decision in *Hertz Corp.* v. *Friend,* which described a corporation's principal place of business, for purposes of diversity jurisdiction, as the "place where the corporation's high level officers direct, control, and coordinate the corporation's activities."[58]

The Commission is of the view that determining the principal place of business of an investment fund may require consideration of additional factors beyond those applicable to operating companies. In the case of a fund, the senior personnel that direct, control, and coordinate a fund's activities are generally not the named directors or officers of the fund but rather persons employed by the fund's investment adviser or the fund's promoter. Therefore, consistent with the Guidance, the Commission would generally consider the principal place of business of a fund to be in the United States if the senior personnel responsible for either (1) the formation and promotion of the fund or (2) the implementation of the fund's investment strategy are located in the United States, depending on the facts and circumstances that are relevant to determining the center of direction, control and coordination of the fund.[59]

Section 23.160(a)(10)(vi) of the Final Rule defines "U.S. person" to include certain legal entities owned by one or more U.S. person(s) and for which such person(s) bear unlimited responsibility for the obligations and liabilities of the legal entity.[60] In such cases, the U.S.

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responsibility prong create risk to U.S. persons only to the extent that legal entity incurs losses and fails to perform obligations).

[50] As indicated above, several commenters recommended generally that the Commission establish a uniform definition of "U.S. person" that would apply both in the context of the cross-border application of the margin rules and with respect to the other swaps regulatory topics covered by the Guidance. *See supra* note 28.

[51] *See* ICI Global at 5–7 (clarification is necessary to avoid imposing Dodd-Frank Act swap provisions on entities that only have "nominal nexus" to United States); SIFMA AMG at 10–12 (reclassifying such funds as U.S. persons solely for purposes of margin rule would be extremely complicated and burdensome for asset managers and their clients); Vanguard at 5. *See also* Guidance, 78 FR at 45314 (providing that a collective investment vehicle that is publicly offered only to non-U.S. persons and not offered to U.S. persons generally would not fall within any of the prongs of the "U.S. person" interpretation in the Guidance).

[52] SIFMA AMG at 12 (such language, which is not present in corresponding prongs of U.S. person interpretation in Guidance, could "cause confusion in terms of whether a person having any branches in the United States needs to take into account its U.S. person status, including in assessing the entity's principal place of business").

[53] *See* FSR at 8; JBA at 12 (while international financial institutions "are invested by the U.S. government, financial institutions generally separate them from the U.S. country risk in evaluating their credit risk in practice"). *See also* 17 CFR 240.3a71–3(a)(4)(iii) (defining "U.S. person" for purposes of the SEC's regulation of security-based swaps to exclude the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, and their agencies and pension plans, and any other similar international organizations, their agencies and pension plans).

[54] *See* IATP at 4 (intergovernmental organizations should "voluntarily practice" the margin requirements in order to "realize the objectives of the [sic] intergovernmental investment charters").

[55] The Commission clarifies that the inclusion of "any branch of the legal entity" in sections 23.160(a)(10)(iii) and (vi) of the Final Rule is intended to make clear that the definition includes both foreign and U.S. branches of an entity and does not introduce any additional criteria for determining an entity's U.S. person status.

[56] *See also* 17 CFR 23.160(a)(5) (defining "non-U.S. person" as any person that is not a U.S. person).

[57] *See, e.g.,* 17 CFR 4.7(a)(1)(iv) (defining "Non-United States person" for purposes of part 4 of the Commission regulations, which applies to commodity pool operators).

[58] 559 U.S. 77, 80 (2010).

[59] *See* Guidance, 78 FR at 45309–12 (providing guidance on application of the principal place of business test to funds and other collective investment vehicles in the context of cross-border swaps, including examples of how the Commission's approach could apply to a consideration of whether the "principal place of business" of a fund is in the United States in particular hypothetical situations). Note that the examples included in the Guidance are for illustrative purposes only and do not purport to address all potential variations in the structure of collective investment vehicles or all factors relevant to determining whether a collective investment vehicle's principal place of business is in the United States.

[60] The Commission does not view the unlimited U.S. responsibility prong as equivalent to a U.S. guarantee (as "guarantee" is defined in the Final Rule). As stated in the Guidance, a guarantee does not necessarily provide for "unlimited responsibility for the obligations and liabilities of the guaranteed entity" in the same sense that the owner of an unlimited liability corporation bears such unlimited liability. *See* 78 FR at 45312.

person owner(s) serve as a financial backstop for all of the legal entity's obligations and liabilities. Creditors and counterparties accordingly look to the U.S. person owner(s) when assessing the risk of dealing with the entity.[61] Because the U.S. person owner(s)' responsibility is unlimited, the amount of equity the U.S. owner(s) have in the legal entity would not be relevant.

In line with the proposed rule, the Final Rule does not include a U.S. majority-owned funds prong. Although the U.S. owners of such funds may be adversely impacted in the event of a counterparty default, the Commission believes that, on balance, the majority-ownership test should not be included in the definition of U.S. person for purposes of the margin rules. Non-U.S. funds with U.S. majority-ownership, even if treated as a non-U.S. person, are excluded from the Commission's margin rules only in limited circumstances (namely, when these funds transact with a non-U.S. CSE that is not a consolidated subsidiary of a U.S. entity or a U.S. branch of a non-U.S. CSE). This result, coupled with the implementation issues raised by commenters, persuade the Commission that including a U.S. majority-owned funds prong in the scope of the "U.S. person" definition would not be appropriate for purposes of the margin rules.[62] The Final Rule's U.S. person definition also does not include the prefatory phrase "includes, but is not limited to" that was included in the Guidance. As stated in the proposed rule, the Commission believes that this catchall should not be included in order to provide legal certainty regarding the application of U.S. margin requirements to cross-border swaps.

The Commission notes that, as discussed in the proposed rule, the Final Rule defines "U.S. person" in a manner that is substantially similar to the definition used by the SEC in the context of cross-border regulation of security-based swaps.[63] The Commission further believes that any differences, such as the inclusion of an unlimited U.S. responsibility prong, are necessary and appropriate in the context of the cross-border application of margin requirements for uncleared swaps, for the reasons discussed above.[64] With respect to the designated international organizations excluded from the SEC's U.S. person definition, the Commission notes that a similar exclusion is unnecessary in the context of the cross-border application of the Commission's margin rules, given that such entities are generally considered non-financial end users under the Final Margin Rule and are therefore unaffected by application of the margin requirements for uncleared swaps.[65]

2. Guarantees

Under the Final Rule, the term "guarantee" is defined to include arrangements, pursuant to which one party to an uncleared swap has rights of recourse against a guarantor, with respect to its counterparty's obligations under the uncleared swap. As discussed in section II.B.2.b.i. below, non-U.S. CSEs whose obligations under the relevant swap are guaranteed by a U.S. person ("U.S. Guaranteed CSEs")[66] are eligible for substituted compliance to the same extent as U.S. CSEs and are similarly ineligible for the Exclusion.

a. Proposed Rule

The proposed rule defined the term "guarantee" as an arrangement pursuant to which one party to a swap with a non-U.S. counterparty has rights of recourse against a U.S. person, with respect to the non-U.S. counterparty's obligations under the swap. The proposed rule defined "rights of recourse" as a conditional or unconditional legally enforceable right to receive or otherwise collect payment, in whole or in part. An arrangement would constitute a "guarantee" regardless of whether the rights of recourse were conditioned upon the non-U.S. counterparty's insolvency or failure to meet its obligations under the relevant swap or whether the counterparty seeking to enforce the guarantee is required to make a demand for payment or performance from the non-U.S. counterparty before proceeding against the U.S. guarantor. The Commission requested comment on all aspects of its proposed definition of "guarantee," including whether it would be appropriate to distinguish guarantee arrangements with a legally enforceable right of recourse from those without direct recourse.[67]

b. Comments

Most commenters supported the proposed definition of "guarantee."[68] Commenters generally preferred it to the broader interpretation of "guarantee" in the Guidance, which includes other types of financial arrangements and support (*e.g.*, keepwell agreements and liquidity puts),[69] and agreed that it would promote legal certainty and lower compliance costs as a result.[70] IIB/SIFMA further argued the proposed definition is appropriate in the margin context and consistent with CEA section 2(i) because, absent such a legal relationship to a U.S. person, a non-U.S. person would not have a sufficient connection with activities in U.S. commerce to warrant the application of

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[61] By extension, by virtue of their unlimited responsibility for the legal entity's swap obligations, the U.S. person owner(s) have an interest in the swap activities of the legal entity to the same extent as if the swap activities were conducted by the U.S. person directly.

[62] Such a fund may nevertheless be a U.S. person by virtue of fitting within the scope of § 23.160(a)(10)(iii) (entities organized or having a principal place of business in the United States). In response to commenters, the Commission further clarifies that whether a pool, fund or other collective investment vehicle is publicly offered only to non-U.S. persons and not offered to U.S. persons would not be relevant in applying § 23.160(a)(10)(iii).

[63] *See* Proposal, 80 FR at 41382 n.46 (discussing the SEC's "U.S. person" definition for purposes of security-based swap regulation).

[64] The SEC does not include the U.S. responsibility prong in its U.S. person definition, but instead treats a legal entity where one or more U.S. person(s) bears unlimited responsibility for the obligations and liabilities of the legal entity as a non-U.S. person with a guarantee. The Commission believes that, for the reasons stated above, these entities should be included as a U.S. person rather than being treated as a non-U.S. person with a guarantee for purposes of the margin requirements for uncleared swaps.

[65] Under the Final Margin Rule, the following international organizations are expressly considered non-financial end users: (1) The International Bank for Reconstruction and Development; (2) The Multilateral Investment Guarantee Agency; (3) The International Finance Corporation; (4) The Inter-American Development Bank; (5) The Asian Development Bank; (6) The African Development Bank; (7) The European Bank for Reconstruction and Development; (8) The European Investment Bank; (9) The European Investment Fund; (10) The Nordic Investment Bank; (11) The Caribbean Development Bank; (12) The Islamic Development Bank; (13) The Council of Europe Development Bank; and (14) Any other entity that provides financing for national or regional development in which the U.S. government is a shareholder or contributing member or which the Commission determines poses comparable credit risk). *See* 17 CFR 23.151 (defining "financial end user," "non-financial end user," and "multilateral development bank"). Under the Final Margin Rule, CSEs are not required to exchange margin with non-financial end users.

[66] This release uses the term "U.S. Guaranteed CSE" for convenience only. Whether a non-U.S. CSE falls within the meaning of the term "U.S. Guaranteed CSE" varies on a swap-by-swap basis, such that a non-U.S. CSE may be considered a U.S. Guaranteed CSE for one swap and not another, depending on whether the non-U.S. CSE's obligations under such swap are guaranteed by a U.S. person.

[67] *See* Proposal, 80 FR at 41385.

[68] *See* FSR at 2, 9; IATP at 5; IIB/SIFMA at 18–19; ISDA at 12; JBA at 12; SIFMA AMG at 4, 13.

[69] *See* IIB/SIFMA at 18–19; ISDA at 12; JBA at 12; SIFMA AMG at 13.

[70] *See* IIB/SIFMA at 18–19; ISDA at 12 (interpretation of "guarantee" in Guidance requires facts-and-circumstances analysis to determine whether arrangement supports a party's ability to pay or perform under swap); JBA at 12; SIFMA AMG at 13 (expressing approval that the proposed definition aligns with guarantee definition adopted by SEC).

U.S. margin rules.[71] Commenters expressed concern, however, that multiple "guarantee" definitions could lead to confusion and recommended that the Commission apply the proposed "guarantee" definition throughout its cross-border policy.[72]

AFR and Better Markets opposed the proposed "guarantee" definition.[73] Both expressed a preference for the broader interpretation of "guarantee" in the Guidance and, like other commenters, recommended that the term have one consistent meaning.[74] AFR argued that both implicit guarantees, such as when a parent entity faces reputational incentives to provide financial support for a subsidiary, and other formal agreements that obligate a U.S. person to provide financial support, create a direct and significant nexus to the U.S. financial system and should be included within the scope of the term "guarantee."[75] Accordingly, the proposed definition of "guarantee" may not fully capture the risk to the U.S. financial markets.[76] AFR suggested that the policy objective of increasing the availability of substituted compliance in the margin context would be better achieved by adopting the broad interpretation of "guarantee" in the Guidance and instead limiting the availability of substituted compliance with respect to swaps involving an "explicit recourse guarantee."[77]

c. Final Rule

The Final Rule defines "guarantee" for purposes of the cross-border application of the Commission's margin rules to mean an arrangement pursuant to which one party to an uncleared swap has rights of recourse against a guarantor, with respect to its counterparty's obligations under the uncleared swap.[78] For these purposes, a party to an uncleared swap has rights of recourse against a guarantor if the party has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from the guarantor with respect to its counterparty's obligations under the uncleared swap. A counterparty has a right of recourse against a guarantor even if the right of recourse is conditioned upon its counterparty's insolvency or failure to meet its obligations under the swap, and regardless of whether the counterparty seeking to enforce the guarantee is first required to make a demand for payment or performance from its counterparty before proceeding against the guarantor. Further, the term "guarantee" applies equally regardless of whether the U.S. guarantor is affiliated with either counterparty or is an unaffiliated third party. In addition, the terms of the guarantee need not necessarily be included within the swap documentation or even otherwise reduced to writing, so long as a party to the swap has legally enforceable rights of recourse under the laws of the relevant jurisdiction.

The Final Rule's definition of guarantee is generally consistent with the proposed rule's definition of guarantee, but reflects certain changes that are intended to more closely align it with the definition included in the Prudential Regulators' Final Margin Rule.[79] Language has been added to the Final Rule to address the concerns of the Commission and Prudential Regulators that swaps could be structured in a manner that would avoid application of the margin requirements to swaps that are guaranteed by a U.S. person.[80] Under this additional language, the term "guarantee" also encompasses any arrangement pursuant to which the guarantor itself has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from any other guarantor with respect to the counterparty's obligations under the uncleared swap. Under the Final Rule, such arrangement will be deemed a guarantee of the counterparty's obligations under the uncleared swap by the other guarantor.

To illustrate, consider a swap between a non-U.S. CSE ("Party A") and a non-U.S. person ("Party B"). Party B's obligations under the swap are guaranteed by a non-U.S. affiliate ("Party C"), who in turn has a guarantee from its U.S. CSE parent entity on Party C's swap obligations ("Parent D"). The Final Rule would deem a guarantee to exist between Party B and Parent D with respect to Party B's obligations under the swap with Party A.[81]

The Commission is cognizant that many other financial arrangements or support, other than a recourse guarantee as defined in the Final Rule, may be provided by a U.S. person to a non-U.S. CSE. The Commission acknowledges that these other financial arrangements or support may transfer risk directly back to the U.S. financial system, with possible significant adverse effects, in a manner similar to an arrangement that is covered by the definition of a "guarantee" in the Final Rule. However, the Commission believes that, in the context of the Final Rule, non-U.S. CSEs benefitting from such other forms of U.S. financial support will likely meet the definition of an FCS, a concept included in the final margin rules adopted by the Prudential Regulators, and thereby be adequately covered by the Commission's margin requirements. In this way, the Commission believes that the Final Rule achieves the dual goals of protecting the U.S. markets while promoting a workable cross-border margin framework that closely tracks the cross-border application of the Prudential Regulators' Final Margin Rule.[82]

3. Foreign Consolidated Subsidiary ("FCS")

Under the Final Rule, the term "Foreign Consolidated Subsidiary" identifies non-U.S. CSEs that are consolidated for accounting purposes with an ultimate parent entity that is a U.S. person (a "U.S. ultimate parent entity"). As further discussed in section II.B.2.b.ii. below, substituted compliance would be broadly available to an FCS to the same extent as any other non-U.S. CSE, but such an FCS would not be eligible for the Exclusion.

a. Proposed Rule

The proposed rule defined a "Foreign Consolidated Subsidiary" as a non-U.S. CSE in which an "ultimate parent entity"[83] that is a U.S. person has a

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[71] *See* IIB/SIFMA at 18–19. *See also* FSR at 9 ("transaction-level" swap risk would not transfer back to United States absent right of recourse against a U.S. person and "entity-level" risk would be captured by other regulatory requirements, such as capital rules).

[72] *See* ISDA at 12; JBA at 12; SIFMA AMG at 13.

[73] AFR at 3, 5–7; Better Markets at 4.

[74] *See* AFR at 3 (adopting different definition solely for purposes of margin rules would not only complicate overall set of cross-border rules, but establish an "extremely poor precedent" for narrowing guarantee concept in applying rest of Guidance); Better Markets at 4 (proposed definition is "less robust" than interpretation of guarantee in Guidance and should not be different in margin context).

[75] *See* AFR at 6.

[76] *See id.*

[77] *See id.* at 5–6.

[78] *See* 17 CFR 23.160(a)(2).

[79] The Final Rule also includes certain technical edits that would not affect the substance of the rule as compared to the proposed rule.

[80] Based on this change to the definition of "guarantee," the Final Rule differs from the proposed rule in that it treats certain non-U.S. persons as if they were U.S. persons.

[81] This example is included for illustrative purposes only, and is not intended to cover all examples of swaps that could be affected by changes in the Final Rules.

[82] The Commission has determined that using the term "explicit recourse guarantee" in lieu of the broader "guarantee" would, in light of the Prudential Regulators' use of the comparable term "guarantee," likely only cause confusion without making any substantive difference with respect to the cross-border application of the Commission's margin requirements.

[83] *See* proposed 17 CFR 23.160(a)(6) (defining "ultimate parent entity" as the parent entity in a

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controlling interest, in accordance with U.S. generally accepted accounting principles ("U.S. GAAP") such that the U.S. ultimate parent entity includes the non-U.S. CSE's operating results, financial position and statement of cash flows in its consolidated financial statements, in accordance with U.S. GAAP.[84] The Commission explained that the fact that an entity is included in the consolidated financial statements of another entity is an indication of potential risk to the other entity that offers a clear and objective standard for the application of margin requirements. The Commission further explained that, as a result of the FCS' direct connection to, and the possible negative impact of its swap activities on, its U.S. ultimate parent entity and the U.S. financial system, an FCS raises a more substantial supervisory concern in the United States relative to other non-U.S. CSEs.

The Commission requested comment on all aspects of its proposed FCS definition, including whether the Commission should instead adopt the "control test" proposed by the Prudential Regulators, which focused solely on the level of ownership and control a U.S. person would have over a non-U.S. subsidiary.[85]

b. Comments

A few commenters expressed strong support for the FCS concept.[86] AFR and Better Markets characterized it as an improvement to the cross-border approach to margin taken in the Guidance, calling it a "logical and reasonable approach" to capturing non-U.S. subsidiaries of U.S. swap entities that may expect an implicit guarantee from a U.S. parent and an "effective remedy to evasion." [87] AFR stated that, by virtue of being included in the same consolidated financial statement, an FCS has a direct financial impact on its U.S. ultimate parent entity, even absent a direct recourse guarantee.[88]

Nevertheless, AFR and IATP expressed some concern over the reliance on U.S. GAAP, particularly with respect to its ability to capture off-balance sheet entities.[89] IATP suggested that the Commission consider including in the FCS definition an option to carry out the consolidated financial reporting according to International Financial Reporting Standards ("IFRS").[90] AFR also expressed concern that reliance on U.S. GAAP may not capture all entities that could expect an implicit guarantee from a U.S. parent, including privately held entities that are not required to prepare consolidated financial statements under U.S. GAAP, and certain variable interest entities or owned funds.[91]

AFR and IATP therefore urged the Commission to expand the FCS definition in a few ways. Both recommended that the FCS definition include entities whose U.S. parent entity is not required to prepare consolidated financial statements (*e.g.*, a private partnership) but that would otherwise meet the standard for consolidation.[92] AFR argued that failing to include such entities within the meaning of "FCS" could result in entities with a similar nexus to the U.S. financial system being treated differently based on factors such as whether the ultimate parent is publicly traded.[93] AFR also urged the Commission to incorporate a facts-and-circumstances test for determining when a foreign subsidiary's relationship with its U.S. parent may create a sufficient nexus to require compliance with U.S. margin rules.[94]

A few commenters opposed the FCS concept altogether.[95] IIB/SIFMA argued that, absent a legal obligation to provide support, an FCS's potential effect on its U.S. ultimate parent entity is not sufficiently "direct" to create a nexus to the U.S. financial system within the meaning of CEA section 2(i).[96] Nevertheless, most commenters, including IIB/SIFMA, preferred the proposed FCS definition to the control test proposed by the Prudential Regulators.[97] IIB/SIFMA also appreciated that the proposed FCS definition would foreclose the possibility of such a non-U.S. CSE having multiple parent entities.[98]

c. Final Rule

The Final Rule defines "Foreign Consolidated Subsidiary" as proposed.[99] Specifically, "Foreign Consolidated Subsidiary" means a non-U.S. CSE in which an ultimate parent entity that is a U.S. person has a controlling financial interest, in accordance with U.S. GAAP, such that the U.S. ultimate parent entity includes the non-U.S. CSE's operating results, financial position and statement of cash flows in the U.S. ultimate parent entity's consolidated financial statements, in accordance with U.S. GAAP. The term "ultimate parent entity" means the parent entity in a consolidated group in which none of the other entities in the consolidated group has a controlling interest, in accordance with U.S. GAAP.[100]

The Commission believes that the FCS concept offers a clear, bright-line test for identifying those non-U.S. CSEs whose uncleared swap activities present a greater supervisory interest relative to other non-U.S. CSEs. Under U.S. GAAP, an FCS' financial statements are consolidated with its U.S. ultimate parent entity by virtue of the parent's

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consolidated group in which none of the other entities in the consolidated group has a controlling interest, in accordance with U.S. GAAP).

[84] Under U.S. GAAP, consolidated financial statements report the financial position, results of operations and statement of cash flows of a parent entity together with subsidiaries in which the parent entity has a controlling financial interest (which are required to be consolidated under U.S. GAAP).

[85] *See* Proposal, 80 FR at 41386. *See also* Prudential Regulators' Proposed Margin Rule, 79 FR at 57379.

[86] *See* AFR at 4–5; Better Markets at 5; IATP at 3, 5–6.

[87] *See* AFR at 4 (FCS concept "economizes" Commission resources by tying regulatory coverage to "easily available" accounting information). *See also* Better Markets at 5 (Guidance should be amended to apply FCS concept to all Title VII requirements).

[88] *See* AFR at 4. *See also* IATP at 3 (inclusion in another's consolidated financial statement indicates a potential risk to that entity).

[89] *See* AFR at 5 (prior to the passage of U.S. Financial Accounting Standards Board ("U.S. FASB") Statements Nos. 166 and 167, U.S. GAAP accounting failed to properly require the consolidation of many securitization entities and such gaps could appear in the future).

[90] *See* IATP at 6 (reliance on IFRS should be predicated on the IFRS agreeing with U.S. FASB participation and offering improved handling of off-balance sheet entities compared to U.S. GAAP).

[91] *See* AFR at 4–5.

[92] *See* AFR at 4–5; IATP at 6 (it would not be "inconceivable" for U.S. CSE to spin off swaps trading activities as private partnerships).

[93] *See* AFR at 5.

[94] *See id.*

[95] *See, e.g.*, AIMA/IA at 3 (touting potential operational costs involved with obtaining counterparty representations regarding FCS status); FSR at 10 (FCS concept is "not necessary" because FCSs will be subject to foreign regulation); IIB/SIFMA at 19–20 (Commission should not distinguish FCSs from other non-U.S. CSEs).

[96] *See* IIB/SIFMA at 14 ("chain of intervening factors and events," including "materiality" of FCS to parent entity, that could affect a U.S. parent's decision to provide support is too long and uncertain).

[97] *See* FSR at 10 (a control test may not clearly identify the non-U.S. covered swap entities that are likely to raise greater supervisory concerns); IATP at 6; IIB/SIFMA at 19–20 (reliance on the familiar standards of U.S. GAAP would promote legal certainty); ISDA at 13 (a control test is not appropriate for the application of margin rules).

[98] *See* IIB/SIFMA at 19–20.

[99] *See* 17 CFR 23.160(a)(1).

[100] *See* 17 CFR 23.160(a)(6). The definition of "Foreign Consolidated Subsidiary" refers only to the U.S ultimate parent entity. The Commission believes that this is appropriate because consolidated financial statements are the financial statements of a group under the control of the ultimate parent entity. Where the ultimate parent entity is a non-U.S. person, the non-U.S. CSE is not categorized as an FCS and therefore would be eligible for the Exclusion (assuming that the other conditions of the Exclusion are satisfied), for the reasons discussed in section II.B.3.

controlling financial interest in the FCS. By virtue of having its financial statements consolidated with those of its U.S. ultimate parent, the financial position, operating results and statement of cash flows of an FCS are included in the financial statements of its U.S. ultimate parent entity and therefore affect the financial position, risk profile and market value of the U.S. ultimate parent. Because of the FCS' direct relationship with, and the possible negative impact of its swap activities on, its U.S. ultimate parent entity and the U.S. financial system, an FCS raises greater supervisory concern in the United States relative to other non-U.S. CSEs (in each case provided that the obligations under the relevant swap are not guaranteed by a U.S. person).[101]

Further, the Commission continues to believe that, in the absence of a direct recourse guarantee from a U.S. person, an FCS should not be treated in the same manner as a U.S. CSE or U.S. Guaranteed CSE. In contrast with a U.S. Guaranteed CSE, in the event of the FCS's default, the U.S. ultimate parent entity does not have a legal obligation to fulfill the obligations of the FCS. Rather that decision would depend on the business judgment of its parent.

By relying on a consolidation test, the FCS concept is intended to provide a clear, bright-line test for identifying those non-U.S. CSEs whose uncleared swaps are likely to raise greater supervisory concerns relative to other non-guaranteed non-U.S. CSEs. The Commission further believes that, as some commenters noted, reliance on familiar U.S. GAAP accounting standards will promote legal certainty. In particular, the Commission notes that consolidation accounting is a longstanding part of U.S. GAAP and that all non-U.S. CSEs with a U.S. ultimate parent entity currently prepare consolidated financial statements.

With respect to the definition's reliance on U.S. GAAP, the Commission notes that since the 2008 financial crisis, the U.S. FASB made significant changes to the consolidation model for variable interest entities ("VIEs") and that as a result of these changes, more VIEs (including special purpose vehicles) are being consolidated with other entities (*i.e.*, their parent entities) under U.S. GAAP. Furthermore, because the U.S. GAAP consolidation requirement adequately addresses these VIEs, the Commission believes that the addition of IFRS as an option is likely to inject unnecessary complexity and costs in many circumstances.[102] Accordingly, the Commission believes that the U.S. GAAP consolidation test in the FCS definition is sufficiently similar to the IFRS consolidation standard with respect to VIEs so that additional reliance on the IFRS standard would be neither necessary nor beneficial.[103]

4. Counterparty Representations

The proposed rule provided that market participants should generally be permitted to reasonably rely on counterparty representations with regard to their status as a U.S. person. The Commission received comments regarding its proposed reliance standard[104] and a request that the Commission also permit reliance on counterparty representations with respect to the guarantee and FCS definitions.[105]

The Commission acknowledges that the information necessary for a swap counterparty to accurately assess the status of its counterparties as U.S. persons or FCSs, or to determine whether a non-U.S. counterparty's obligations under a swap are guaranteed by a U.S. person, may be unavailable, or available only through overly burdensome due diligence. For this reason, the Commission believes that a market participant should generally be permitted to reasonably rely on written counterparty representations in each of these respects. The Commission clarifies that, consistent with the reliance standard articulated in the Commission's external business conduct rules,[106] market participants may reasonably rely on such a counterparty representation unless it has information that would cause a reasonable person to question the accuracy of the representation.

B. Applicability of Margin Requirements to Cross-Border Uncleared Swaps

The following sections discuss the cross-border application of the margin requirements to swaps between CSEs and their counterparties, including when substituted compliance and the Exclusion are applicable. Section 1 provides a brief overview of the proposed rule; section 2 addresses the availability of substituted compliance; section 3 addresses the availability of the Exclusion; section 4 discusses a special provision in the Final Rule for non-segregation jurisdictions; and section 5 discusses a special provision in the Final Rule for non-netting jurisdictions.

1. Proposed Rule

Under the proposed rule, the application of substituted compliance and the scope of the Exclusion closely tracked the Prudential Regulators' Proposed Margin Rule.[107] Specifically:

- A U.S. CSE would be required to comply with the Commission's margin rules for all uncleared swaps but would be eligible for substituted compliance with respect to the requirement to post (but not the requirement to collect) initial margin for swaps with certain non-U.S. counterparties (referred to herein as "partial substituted compliance").[108]
- A U.S. Guaranteed CSE would receive the same treatment as a U.S. CSE.
- A non-U.S. CSE whose obligations under the relevant swap are not guaranteed by a U.S. person would be eligible for substituted compliance unless the counterparty to the swap is a U.S. CSE or U.S. Guaranteed CSE, in which case substituted compliance would be available with respect to the requirement to collect (but not the requirement to post) initial margin (also referred to as "partial substituted compliance").
- A non-U.S. CSE would be eligible for an exclusion from the Final Margin Rule when trading with a non-U.S. person counterparty provided that (a) neither party's obligations under the relevant swap are guaranteed by a U.S.

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[101] The Commission notes that it has a relatively greater supervisory interest in FCSs than other non-U.S. CSEs, even if they have a U.S. subsidiary or affiliate, because an FCS's ultimate parent entity is a U.S. person.

[102] The Commission notes that the standards for consolidation under U.S. GAAP's VIE model are similar to the consolidation standards that would apply under IFRS, as both consider control over one entity by the other. The Commission further notes that it does not believe that special purpose vehicles are likely to be used to conduct swaps business. Even if such vehicles transact in swaps and, consequently, register as CSEs, the ultimate parent entity would likely exercise control over them because these vehicles typically rely on parental support or guarantees to maintain their credit standards. Such control would lead to consolidation under U.S. GAAP.

[103] The Commission notes that although privately held companies are not under a regulatory obligation to prepare and file consolidated financial statements pursuant to U.S. GAAP, they nevertheless are likely to prepare consolidated financial statements for other purposes (*e.g.*, to provide to creditors as a condition to loan or to private investors), in which case their foreign subsidiaries may fall within the parameters of the FCS definition.

[104] *See, e.g.*, SIFMA AMG at 12 (standard for reliance on counterparty representations with respect to U.S. person status is consistent with that articulated in Guidance and Commission's external business conduct rules; proposed rule could be read to require "further, unnecessary diligence").

[105] *See, e.g., id.*

[106] *See* 17 CFR 23.402(d).

[107] *See* 79 FR at 57379–81.

[108] U.S. CSEs would not be eligible for substituted compliance with respect to the requirement that they collect initial margin or the requirement to post or collect variation margin.

person; (b) neither party is an FCS; and (c) the swap is not conducted by or through a U.S. branch of a non-U.S. CSE.

The Commission requested comment on all aspects of the proposed rule, including how the rule should treat FCSs (*e.g.,* whether they should be offered the same treatment as U.S. Guaranteed CSEs or conversely be offered the Exclusion), whether U.S. branches should be eligible for the Exclusion, and whether the Commission should provide exceptions related to certain "emerging markets" or non-netting jurisdictions.[109]

2. Substituted Compliance

a. Comments

Most commenters argued for the greater availability of substituted compliance. Some requested that all CSEs, whether a U.S. persons or a non-U.S. person, be eligible for full substituted compliance with respect to all comparable foreign margin requirements, including any swap dealer in a BCBS–IOSCO framework-compliant jurisdiction.[110] Others phrased their requests in narrower terms, arguing for the broader availability of substituted compliance for U.S. CSEs and/or U.S. Guaranteed CSEs when trading with non-U.S. persons.[111] Commenters generally argued that requiring CSEs to comply with the Commission's margin requirements in the face of comparable foreign margin requirements would undermine international efforts to develop a consistent global swaps regime and impose unnecessary and costly compliance burdens, resulting in competitive disparities and market inefficiencies.[112] Several commenters also argued that the proposed rule would involve substantial operational costs, including categorizing market participants and developing appropriate documentation.[113]

With respect to U.S. CSEs and U.S. Guaranteed CSEs, IIB/SIFMA and ISDA argued that compliance with the Commission's margin requirements was not necessary to prevent the transmission of risk to the U.S. financial system because the risk would be adequately addressed by comparable foreign margin requirements.[114] IIB/SIFMA argued that the proposed substituted compliance regime could actually increase liquidity risk by discouraging non-U.S. counterparties from trading with U.S. CSEs and U.S. Guaranteed CSEs in order to avoid costs associated with understanding and complying with the Commission's margin requirements, and that the resulting increased concentration of bilateral credit exposures among U.S. CSEs and U.S. Guaranteed CSEs would increase the risk of contagion in U.S. markets.[115] ISDA further argued that "[c]omity and respect for the supervisory interests of non-U.S. regulators" argue in favor of full substituted compliance or exclusion for swaps involving non-U.S. person counterparties.[116] FSR argued that substituted compliance is at least necessary for foreign branches because they are likely to be subject to foreign margin requirements and pose the same concerns to foreign regulators as the U.S. branches of non-U.S. CSEs pose to U.S. regulators.[117]

Several commenters raised concerns with regard to the proposal to allow partial substituted compliance.[118] SIMFA AMG argued that partial substituted compliance would be "inconsistent with the importance of bilateral margining," add unnecessary costs and complexity, and increase the potential for margin disputes.[119] AIMA/IA argued that developing a legal agreement allowing for the transfer of margin amounts according to more than one margin regime would be "commercially and legally problematic." [120] As a result, market participants would default to complying with the Commission's margin requirements, negating the value of substituted compliance.[121] ISDA similarly argued that developing a standardized model for initial margin that could account for different margin rules in one netting set would be "impractical" in the available timeframe for compliance.[122] FSR argued that partial substituted compliance was not "in the spirit of the International Standards" [123] and pointed out that its usefulness may be questionable, given that no other foreign jurisdiction has proposed a similar approach.[124]

IATP, on the other hand, supported the proposed substituted compliance regime.[125] IATP agreed that FCSs should be granted substituted compliance but not U.S. Guaranteed Affiliates because losses from the swaps of an FCS may have a negative impact on the foreign jurisdiction's economy.[126] IATP also agreed that U.S. Guaranteed Affiliates should not be eligible for substituted compliance with respect to the requirement to collect initial margin from a non-U.S. counterparty.[127] AFR described the proposed rule as creating a "very significant scope for substituted compliance" with respect to non-U.S. CSEs, but suggested that the scope would not be a concern provided the substituted compliance were limited to foreign rules that are "very similar" to U.S. margin requirements.[128]

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[109] *See* Proposal, 80 FR at 41387, 88–91.

[110] *See, e.g.,* AIMA/IA at 4–5 (substituted compliance should be "all encompassing, and applicable to all parties to a transaction"); ICI Global at 2, 9 (substituted compliance should be made available "without qualification" wherever foreign jurisdiction's margin requirements are comparable); ISDA at 2, 7–8 (substituted compliance should be available for any transaction subject to foreign requirements comparable to BCBS–IOSCO framework); SIFMA AMG 4, 6–8 (market participants should be allowed "to comply with a single set of substantive margin requirements for all uncleared swaps"). *See also* ABA/ABASA at 3 (market participants should be allowed to rely on substituted compliance "to the greatest possible degree across the markets in and structures through which they operate").

[111] *See, e.g.,* FSR at 7 (U.S. CSEs should be able to rely on substituted compliance for both posting and collecting of initial margin when trading with non-U.S. CSEs and their foreign branches be extended full substituted compliance); IIB/SIFMA at 4–9 (substituted compliance should be available for U.S. CSEs and U.S. Guaranteed CSEs with respect to all margin requirements, including posting and collecting both initial and variation margin); JBA at 8–9 (availability of substituted compliance for U.S. Guaranteed CSEs is too limited); PensionsEurope at 2 ("full substituted compliance," including collection of initial margin and variation margin, should be available for transactions between U.S. Guaranteed CSEs and "financial institutions without a U.S. nexus").

[112] *See, e.g.,* AIMA/IA at 1; FSR at 3–7; ICI Global at 8–9. *See also* Vanguard at 2 (applying substituted compliance on a "transaction-by-transaction basis" would undermine "the fundamental risk mitigation tool of cross-transactional close-out netting").

[113] *See, e.g.,* AIMA/IA at 1 (proposed rule would require a "significant amount of replacement and additional documentation to account for different counterparty combinations"); ISDA at 5 (operational complexity of proposed substituted compliance regime would further increase operating costs); IIB/SIFMA at 7 (CSEs would not know sufficient information about businesses of their counterparties to categorize them, and non-U.S. counterparties would not be familiar with, and would be reluctant to hire counsel to determine, all U.S. laws relevant to making the determination); SIFMA AMG at 6 (highlighting complications in determining availability of substituted compliance on basis of counterparty status in context of block trades).

[114] *See* IIB/SIFMA at 5; ISDA at 6–7. *See also* ICI Global at 9 (by not permitting substituted compliance in certain instances, Commission would effectively be determining that foreign margin requirements are not "good enough" despite being found comparable).

[115] *See* IIB/SIFMA at 6–7.

[116] *See* ISDA at 6.

[117] *See* FSR at 7–8. *See also* AIMA/IA at 3 (absence of substituted compliance for foreign branches of U.S. CSEs is an "apparent gap[ ]").

[118] *See, e.g.,* AIMA/IA at 4; FSR at 7; ISDA at 3, 5; SIFMA AMG at 10.

[119] *See* SIFMA AMG at 10 (highlighting additional complexities in calculating margin for clients using multiple asset managers).

[120] *See* AIMA/IA at 4.

[121] *See id.*

[122] *See* ISDA at 9 (counterparties wanting to use a single custodian could face additional challenges, as the custodial arrangement would have to be drafted to accommodate overlapping and potentially inconsistent requirements for segregation).

[123] *See* proposed 17 CFR 23.160(a)(3) (defining "International Standards" as based on the BCBS–IOSCO framework).

[124] *See* FSR at 7.

[125] *See* IATP at 3–4 (proposed rule would provide "the greatest opportunity for effective risk mitigation against swaps counterparty default" and would be a "critical step" to ensuring that "de-guaranteed" swaps "will not continue to elude effective regulation").

[126] *See* IATP at 7.

b. Final Rule

The Commission has determined to adopt a cross-border framework largely as proposed, but with certain modifications to address concerns raised by commenters and to further align the rule with the cross-border approach adopted by the Prudential Regulators. Generally speaking, the cross-border margin framework in the Final Rule reflects the Commission's efforts to carefully tailor the application of the Commission's margin requirements to address comity considerations and mitigate potential adverse impact on market efficiency and competition without compromising the safety and soundness of CSEs. The availability of substituted compliance under the Final Rule therefore depends on the degree of nexus the CSEs and their counterparties have to the U.S. financial system, as indicated by their status (*e.g.,* whether they are U.S. persons or non-U.S. persons whose obligations under the relevant swap are guaranteed by a U.S. person).

i. Uncleared Swaps of U.S. CSEs and U.S. Guaranteed CSEs

As a general rule, the Commission believes that, in light of their position in the U.S. financial system, U.S. persons and U.S. Guaranteed CSEs should be required to comply with the Commission's margin requirements. Under the Final Rule, however, U.S. CSEs and U.S. Guaranteed CSEs would be eligible for substituted compliance with respect to the requirement to post (but not the requirement to collect) initial margin provided that the counterparty is a non-U.S. person whose obligations under the relevant swap are not guaranteed by a U.S. person. By virtue of their being domiciled or organized in the United States, U.S. CSEs give rise to greater supervisory interests relative to other CSEs. U.S. Guaranteed CSEs create a similar supervisory interest because, as discussed in the proposed rule, the swap of a non-U.S. CSE whose obligations under the swap are guaranteed by a U.S. person is identical, in relevant aspects, to a swap entered into directly by a U.S. person.

Nevertheless, the Commission believes that, in the interest of comity, permitting substituted compliance for the limited requirement of posting initial margin would be reasonable. While requiring a CSE to post initial margin protects the counterparty in the event of default by the CSE, it also serves as a risk management tool because it limits the amount of leverage a CSE can incur by requiring that it have adequate eligible collateral to enter into an uncleared swap. Accordingly, when the counterparty is a non-U.S. person (whose obligations under the swap are not guaranteed by a U.S. person), the Commission believes that substituting the foreign margin requirements with regard to the initial margin posted would be reasonable. The Commission further believes that allowing substituted compliance in this limited instance may reduce transaction costs for U.S. CSEs when trading with non-U.S. counterparties[129] and thereby mitigate potential competitive disparities (relative to other CSEs and non-CFTC registered dealers operating in the foreign jurisdiction), while ensuring that the U.S. CSE is adequately protected in the event of default of the non-U.S. counterparty. The availability of substituted compliance is limited to circumstances where the non-U.S. counterparty's obligations under the relevant swap are not guaranteed by a U.S. person in order to avoid incentivizing market participants to structure their swaps solely for purposes of avoiding application of the Commission's margin requirements.[130]

The Commission does not believe that partial substituted compliance would prohibit the use of a single netting set for calculating initial margin. Under the Final Rule, a U.S. CSE can comply with the Commission's initial margin requirements by posting pursuant to comparable foreign margin requirements. Accordingly, from the Commission's perspective, one netting set could encompass swaps that comply with both foreign and CFTC initial margin requirements.[131]

The Commission understands that CSEs relying on partial substituted compliance may face certain costs or challenges not experienced by non-U.S. CSEs that are eligible for full substituted compliance. Nevertheless, as discussed above, the Commission believes that granting substituted compliance more broadly (*e.g.,* permitting both collection and posting of initial margin pursuant to the foreign requirements) would not be appropriate for a swap transaction involving a U.S. CSE or a U.S. Guaranteed CSE. Moreover, U.S. CSEs and U.S. Guaranteed CSEs that elect to rely on partial substituted compliance may realize savings in the form of reduced funding costs (to the extent that foreign jurisdiction requires less initial margin to be posted), and their non-U.S. counterparties may experience lower operational costs as a result of only having to comply with their home jurisdiction's requirements.

Finally, the Commission does not believe it would be appropriate to broaden the scope of substituted compliance available to swaps conducted through foreign branches of U.S. CSEs. A foreign branch is legally indistinguishable from the U.S. CSE itself, such that the whole U.S. CSE, and not merely the foreign branch, holds itself out to the market and assumes the risks of any uncleared swap transactions conducted by or through the foreign branch. Accordingly, swaps conducted through a foreign branch of a U.S. CSE are appropriately treated the same as swaps of the U.S. CSE as a whole. Moreover, if the Commission were to allow broader substituted compliance for swaps conducted through foreign branches than swaps conducted domestically, U.S. CSEs could be incentivized to conduct swap activity through foreign branches to avoid direct compliance with Commission's margin requirements.

ii. Uncleared Swaps of Non-U.S. CSEs (Including FCSs) Whose Obligations Under the Relevant Swap Are Not Guaranteed by a U.S. Person

Under the Final Rule, consistent with the Proposed Rule, non-U.S. CSEs (including FCSs) whose obligations under the relevant uncleared swap are not guaranteed by a U.S. person may avail themselves of substituted compliance to a greater extent than U.S. CSEs and U.S. Guaranteed CSEs. Specifically, where the obligations of a non-U.S. CSE (including an FCS) under the relevant swap are not guaranteed by a U.S. person, substituted compliance is available with respect to its uncleared swaps with any counterparty, other than a U.S. CSE or a U.S. Guaranteed CSE.[132]

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[127] *See id.*

[128] *See* AFR at 7. *See also id.* at 4 (scope of substituted compliance could become "overbroad" given that proposed rule included narrow definition of "guarantee" and limited Foreign Consolidated Subsidiaries to subsidiaries of registered CSEs).

[129] That is, if the initial margin amount required to be posted under the foreign rule is lower than the amount required under the Commission's Final Margin Rule, and the parties elect for the CSE to post margin pursuant to the foreign margin requirements, the lower margin may reduce the U.S. CSE's funding costs.

[130] For example, if partial substituted compliance were available for non-U.S. counterparties that are guaranteed by a U.S. person, a swap between a U.S. CSE and a U.S. counterparty could be restructured as a swap between a U.S. CSE and a non-U.S. counterparty that is guaranteed by a U.S. person in order to avoid application of the Commission's margin requirements.

[131] The Commission similarly does not expect that reliance on partial substituted compliance will hinder the development or use of a standardized model for initial margin, as the Commission believes that a single model could be developed to satisfy the initial margin requirements of multiple jurisdictions.

The broad substituted compliance framework available to this category of non-U.S. CSEs reflects the Commission's recognition of foreign jurisdictions' supervisory interest in CSEs that are domiciled and operating in their jurisdictions. In addition, the Commission understands that compliance with two sets of margin regulations may lead to costs and burdens for non-U.S. CSEs not faced by their competitors in the local jurisdiction and may provide disincentives for foreign clients to transact with a non-U.S. CSE. The Commission believes that making substituted compliance broadly available to non-U.S. CSEs that are not guaranteed by a U.S. person may help to reduce the potential adverse impact on market efficiency and competition, without compromising the protections for the non-U.S. CSE and the U.S. financial markets.

As discussed in the next section, a non-U.S. CSE that is not an FCS will be eligible for the Exclusion from the Commission's margin rules under certain circumstances. However, uncleared swaps entered into by an FCS will not be eligible for any exclusion because of its relationship with its U.S. ultimate parent entity, and because of the possible negative impact of its swap activities on its U.S. ultimate parent entity and the U.S. financial system. As explained in section II.A.3.c. above, the financial position, operating results, and statement of cash flows of an FCS are included in the financial statements of the U.S. ultimate parent entity and therefore have a direct impact on the consolidated entity's financial position, risk profile, and market value. The Commission is also concerned that extending the Exclusion to FCSs would incentivize U.S. entities to conduct their swap activities with non-U.S. counterparties through non-U.S. subsidiaries solely in order to avoid application of the Dodd-Frank Act margin requirements, leading to further bifurcation between U.S. and non-U.S. swap business.

The Commission recognizes that its decision not to extend the Exclusion to FCSs could put them at a disadvantage relative to other non-U.S. market participants/swap dealers (including those that are CSEs).[133] However, given the supervisory concerns raised by the nexus between FCSs and their U.S. ultimate parent entity, the Commission believes that extending the Exclusion to an FCS would not further the paramount statutory objective of ensuring the safety and soundness of a CSE and the stability of U.S. financial markets. The Commission notes that potential competitive disparities may be mitigated to the extent that the relevant foreign jurisdiction implements comparable margin requirements.

3. Exclusion

a. Comments

Several commenters supported the Exclusion because they believed that it recognized the absence of a U.S. jurisdictional nexus.[134] Nevertheless, these commenters requested that the Exclusion be expanded to include U.S. branches of non-U.S. CSEs and FCSs.[135]

With respect to U.S. branches, IIB/SIFMA argued that distinguishing them would not be necessary from a risk-mitigation perspective because the risk remains with the non-U.S. CSE outside the United States regardless of whether the non-U.S. CSE involves U.S. personnel.[136] ISDA and ICI Global further argued that treating U.S. branches differently from the rest of the CSE could create "significant operational issues and credit risks." [137] ICI Global stated that the same ISDA Master Agreement typically governs all transactions involving both the U.S. and non-U.S. branches of a non-U.S. CSE, and that not granting the Exclusion to swaps between a non-U.S. person and a U.S. branch of a non-U.S. CSE (whose obligations are not guaranteed by a U.S. person) may require parties to document transactions with the U.S. branch under a separate master agreement, which could create operational difficulties.[138] ICI Global also expressed concern that disparate treatment of U.S. branches could lead to additional credit risk because counterparties might lose netting benefits under bankruptcy laws.[139]

With respect to FCSs, ICI Global argued that consolidation is insufficient to create a "direct" U.S. nexus because the U.S. ultimate parent is not under a legal obligation to support the FCS.[140] IIB/SIFMA added that foreign jurisdictions have not proposed to apply margin rules to foreign, non-guaranteed subsidiaries and that the Commission should extend the Exclusion to avoid overlapping requirements that could lead market participants to avoid trading with an FCS.[141] Although substituted compliance would potentially be available in place of the Exclusion, ISDA asserted that the difference between the Exclusion and substituted compliance is not costless, as affected swap dealers would incur costs of complying with any conditions imposed with respect to substituted compliance and with the Commission's exercise of its related examination authority, in addition to lost business that could result if substituted compliance is not "seamless" and counterparties are "inconvenienced" by its application.[142]

As an alternative to extending the Exclusion to FCSs, IIB/SIFMA suggested that the Commission grant an exclusion to FCSs operating without a U.S. guarantee when transacting with non-U.S. persons operating without a U.S. guarantee, up to an aggregate 5 percent limit on the notional trading volume in uncleared swaps entered into by commonly controlled FCSs under the exclusion relative to the total notional swap trading volume of entities within the common U.S. ultimate parent entity's consolidated group.[143] IIB/SIFMA argued that such a limited exclusion would achieve the Commission's risk mitigation objectives without directly regulating wholly non-U.S. counterparties.[144]

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[132] With respect to uncleared swaps of a non-U.S. CSE whose obligations under the swap are not guaranteed by a U.S. person, on the one hand, with a U.S. CSE or a U.S. Guaranteed CSE, on the other hand, substituted compliance would only be available for initial margin collected by the non-U.S. CSE whose obligations under the relevant swap are not guaranteed by a U.S. person, as discussed above.

[133] For example, a non-U.S. CSE relying on the Exclusion or non-CFTC registered swap dealers may be able to realize cost savings and offer better pricing terms to foreign clients.

[134] *See* ICI Global at 2, 5; IIB/SIFMA at 10.

[135] *See id. See also* ISDA at 3 (Exclusion should be expanded to include any swap between a non-U.S. CSE, whether or not guaranteed, and any non-U.S. person counterparty that is not guaranteed by a U.S. person).

[136] *See* IIB/SIFMA at 16.

[137] *See* IIB/SIFMA at 16; ICI Global at 10–11.

[138] *See* ICI Global at 10–11.

[139] *See also* ISDA at 11 (fragmenting netting sets could increase risk and discourage use and employment of U.S. personnel).

[140] *See* ICI Global at 11. *See also* IIB/SIFMA at 14 (CEA section 2(i) does not authorize the Commission to regulate a foreign subsidiary solely due to potential for support from and risk to a U.S. parent entity because, absent a legal obligation to provide support, the "chain of intervening factors and events" that might lead to such support would not satisfy "direct" requirement in CEA section 2(i)).

[141] *See* IIB/SIFMA at 15.

[142] *See id.* at 7.

[143] *See* IIB/SIFMA at 16.

Both AFR and Better Markets expressed support for the proposal not to extend the Exclusion to FCSs, describing it as a means of addressing the issue of de-guaranteeing.[145] AFR nevertheless expressed concern that the Exclusion would apply to a non-U.S. CSE when entering into a swap with a foreign subsidiary that is a financial end user that has a U.S. ultimate parent, and suggested that the Commission also deny the Exclusion in this case.[146] AFR also suggested that the Commission "supplement" its approach by further denying the Exclusion to a non-consolidated, non-U.S. subsidiary that could, based on the facts and circumstances, have a "major impact on the financial well-being of the parent," including circumstances where the parent does not use U.S. GAAP accounting.[147]

b. Final Rule

The Commission has determined to adopt the Exclusion largely as proposed, with a modification that preserves the Commission's intent with respect to the treatment of inter-affiliate swaps under the Final Margin Rule. Under the Final Rule, an uncleared swap entered into by a non-U.S. CSE with a non-U.S. counterparty (including a non-U.S. CSE) is excluded from the Commission's margin rules, provided that neither counterparty's obligations under the relevant swap are guaranteed by a U.S. person and neither counterparty is an FCS.[148] This approach reflects the Commission's recognition of foreign jurisdictions' strong supervisory interest in the uncleared swaps of non-U.S. CSEs and their non-U.S. counterparties, both of which are domiciled and operate abroad. Under these circumstances, the Commission believes that it is appropriate to make a limited exception to the principle of firm-wide application of margin requirements, consistent with comity principles, so as to exclude a narrow class of uncleared swaps involving a non-U.S. CSE and a non-U.S. counterparty.[149]

The Commission notes that a non-U.S. CSE that can avail itself of the Exclusion is still subject to the Commission's margin rules with respect to all other uncleared swaps (*i.e.*, those that do not qualify for the Exclusion), with the possibility of substituted compliance. And any excluded swaps may be covered by the margin requirements of another jurisdiction that adheres to the BCBS–IOSCO framework.[150] Additionally, the non-U.S. CSE would be subject to the Commission's capital requirements, which, as proposed, would impose a capital charge for uncollateralized exposures.[151]

The Commission considered comments urging a broader scope of the Exclusion to include, for example, any FCSs so long as their swaps are not guaranteed by a U.S. person or alternatively, do not exceed a "de minimis" level of swap activity. However, the Commission does not believe that extending the Exclusion to uncleared swaps of FCSs is appropriate given the nature of their relationship to their U.S. ultimate parent entity. The limited scope of the Exclusion reflects that the benefits of the margin requirement are achieved when it is applied to all CSEs and on a firm-wide basis and therefore, any exception needs to be carefully tailored to avoid creating a significant supervisory gap and inappropriate levels of risk to the CSE and the U.S. financial system.

The Commission also disagrees with comments that the Exclusion is overly broad because it would extend to a swap between a non-U.S. CSE and a foreign subsidiary of a U.S. financial end user.[152] The Commission notes that such a foreign subsidiary would not be an FCS even if it is consolidated with its U.S. parent because it is not a CSE. The Commission believes that a swap between such a foreign subsidiary and a non-U.S. CSE should be eligible for the Exclusion because financial end users are not covered swap entities and are likely to include many entities that do not conduct a significant level of swap activities; as such, their swap activities would not have the same effect on the U.S. ultimate parent entity as would a covered swap entity's. Therefore, the Exclusion applies to qualifying non-U.S. CSEs when transacting with foreign subsidiaries that are financial end users that have a U.S. ultimate parent entity.

Under the Final Margin Rule, a CSE is not required to collect initial margin from its affiliate, provided, among other things, that affiliate collects initial margin on its market-facing swaps or is subject to comparable initial margin collection requirements (in the case of non-U.S. affiliates that are financial end users) on its own market-facing swaps. In order to preserve the Commission's intent with respect to the treatment of inter-affiliate swaps under the Final Margin Rule, the Exclusion is not available if the market-facing swap of the non-U.S. CSE (that is otherwise eligible for the Exclusion) is not subject to comparable initial margin collection requirements in the home jurisdiction and any of the risk associated with the uncleared swap is transferred, directly or indirectly, through inter-affiliate transactions, to a U.S. CSE or a U.S. Guaranteed CSE. This condition is intended to ensure that inter-affiliate swaps are not used to avoid the requirement to collect initial margin from third-parties.[153] The limitation on the Exclusion is consistent with that rationale.

Under the Final Rule, uncleared swaps of a U.S. branch of a non-U.S. CSE are not eligible for the Exclusion. The Commission does not believe extending the Exclusion to U.S. Branches would be appropriate. Generally speaking, U.S. branches of foreign banks[154] have a Prudential Regulator and must therefore comply with the Prudential Regulators' margin rules. The Prudential Regulators' Final Margin Rule does not grant an exclusion for the uncleared swaps of such U.S. branches on the basis that U.S. branches of foreign banks clearly operate within the United States and could pose risk to the U.S. financial system.[155] To the extent that a U.S. branch of a non-U.S. CSE is subject to the Commission's requirements rather than a Prudential Regulator, the Final Rule appropriately harmonizes with the Prudential Regulators.[156] Additionally, given that U.S. branches operate within the United States, allowing their swaps to be excluded from application of the Commission's margin requirements could disadvantage U.S. CSEs when competing with U.S. branches for U.S. clients[157] and create incentives for CSEs to operate through U.S. branches solely for purposes of avoiding the Dodd-Frank Act margin requirements. Accordingly, the Commission believes that a non-U.S. CSE should be subject to the Commission's margin requirements when conducting swap activities from within the United States by or through a U.S. branch.[158]

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[144] *See id.*

[145] *See* AFR at 2 (proposed rule would go "some distance" toward limiting evasion of Commission's margin requirements); Better Markets at 5 (proposed rule "adequately captures" many foreign affiliates that may have escaped U.S. margin requirements through de-guaranteeing).

[146] *See* AFR at 8 (foreign subsidiary of a U.S. financial end user that is not a CSE would not be defined as an FCS even if consolidated).

[147] *See* AFR at 3. *See also* Better Markets at 2 (Exclusion is needlessly complicated and indirect and Commission should address issue more completely by reverting to and updating approach in Guidance).

[148] The Exclusion also does not apply if the counterparty is a U.S. branch of a non-U.S. CSE. *See* 17 CFR 23.160(b)(2)(ii).

[149] The Commission disagrees that the Commission lacks a jurisdictional nexus with respect to swaps subject to the Exclusion. To the contrary, as discussed above, by the terms of the relevant statutory provision, CEA section 4s(e), and the underlying purpose of that provision, the Commission's authority to adopt margin rules applies to all CSEs, U.S. and non-U.S., and extends to all of their uncleared swaps, regardless of the counterparties' domicile or the location of the swaps transaction.

[150] In this regard, the Commission notes that, as indicated in *supra* note 23, representatives of 26 regulatory authorities (comprising 17 nations) participated in the WGMR that developed the BCBS–IOSCO framework. As of today, 24 of these 26 regulatory authorities that participated in the WGMR have proposed a regulatory framework for margin for uncleared swaps, all of which are consistent with the BCBS–IOSCO framework. In addition, these 24 regulatory authorities have jurisdiction over more than 90% of the swaps activities in the world by any measure.

[151] *See* Proposed Capital Rule, 76 FR 27802.

[152] The term "financial end user" is defined in section 23.150 of the Final Margin Rule.

[153] *See* 17 CFR 23.159.

[154] *See* Prudential Regulators' Final Margin Rule, 80 FR at 74901 (setting forth the definition of "foreign bank" for purposes of the Prudential Regulators' Final Margin Rule).

4. Special Provision for Non-Segregation Jurisdictions[159]

a. Comments

Several commenters supported the creation of a de minimis exception similar to the emerging markets exemption set out in the Guidance.[160] Specifically, commenters recommended that U.S. CSEs be exempt from the margin requirements when trading with "emerging market counterparties" provided that the aggregate notional volume of its uncleared swaps with emerging market counterparties does not exceed 5 percent of the CSEs' total notional swap trading volume, both cleared and uncleared.[161] They further recommended defining "emerging market counterparty" as a non-U.S. person that is (a) not a registered CSE, (b) not guaranteed by a U.S. person, and (c) not located in a jurisdiction covered by a comparability determination for uncleared swaps margin rules issued by the Commission.[162] Commenters generally agreed that the exception should apply to foreign branches of U.S. CSEs,[163] but some commenters also recommended that it be extended to U.S. Guaranteed CSEs[164] and FCSs.[165] For swaps between U.S. Guaranteed CSEs and emerging market counterparties, ABA/ABASA and IIB/SIFMA recommended that the de minimis threshold apply to the aggregate volume of uncleared swaps guaranteed by a particular U.S. person, rather than to the trading volume of the U.S. Guaranteed CSE itself.[166]

In support of such an exception, commenters argued that legal and operational constraints in emerging market jurisdictions could make compliance with margin rules difficult, if not impossible.[167] As a result, broad application of the margin requirements to these swaps could negatively impact the competitiveness of registered CSEs.[168] Commenters argued that by limiting the exception to CSEs with a de minimis level of swaps activity, the Commission could accomplish the goal of ensuring a CSE's safety and soundness but with less disruption to existing business relationships than the exchange of initial and variation margin would impose.[169] IIB/SIFMA also argued that the exception would be consistent with CEA section 2(i), and encouraged the Commission to coordinate with foreign regulators to develop a consistent global approach to swaps with emerging market counterparties.[170]

b. Final Rule

The Commission is adopting a special provision for swaps with counterparties in foreign jurisdictions where limitations in the legal or operational infrastructure of the jurisdiction make it impracticable for the CSE and its counterparty to comply with the custodial arrangement requirements in the Final Margin Rule ("non-segregation jurisdictions").[171] The Commission understands that CSEs may transact swaps with counterparties located in foreign jurisdictions that do not have legal or operational infrastructures to support custodial arrangements required under the Final Margin Rule.[172] In the face of these legal and operational impediments, FCSs and foreign branches of U.S. CSEs would be forced to discontinue their swaps business with clients located in these jurisdictions. Taking these factors into consideration, the Commission has determined to include a special provision to accommodate this unique circumstance. The Commission notes that the Prudential Regulators adopted a similar provision in their final margin rules.

Under section 23.160(e) of the Final Rule, an FCS or a foreign branch of a U.S. CSE would be eligible to engage in uncleared swaps with certain non-U.S. counterparties in non-segregation jurisdictions, without complying with either the requirement to post initial margin[173] or the custodial arrangement requirements that pertain to initial margin collected by a CSE under the Final Margin Rule,[174] subject to certain conditions.[175] This special provision reflects the Commission's recognition that CSEs would otherwise be precluded from engaging in any uncleared swaps in these foreign jurisdictions as they cannot satisfy the custodial requirements of the Final Margin Rule. The Commission clarifies that the special provision for non-segregation jurisdictions only provides relief from the specified requirements; all other margin rules in part 23 of the Commission's regulations (with the exception of the special provision for non-netting jurisdictions) would continue to apply.[176]

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[155] *See* Prudential Regulators' Final Margin Rule, 80 FR at 74883.

[156] Under the International Banking Act of 1978, 12 U.S.C. 3101 *et seq.*, U.S. branches are generally treated the same as national banks operating in that same location and are subject to the same laws, regulations, policies, and procedures that apply to national banks.

[157] That is, a U.S. branch of a non-U.S. CSE that is permitted to operate outside of the Commission's margin requirements may, by virtue of being subject to reduced or even no margin requirements, be able to offer a more competitive price to U.S. clients than a U.S. CSE.

[158] As noted above in section II.B.3.a., some commenters suggested that not extending the Exclusion to U.S. branches of non-U.S. CSEs could require non-U.S. CSEs to document transactions with the U.S. branch under a separate ISDA Master Agreement, creating operational challenges. However, because such U.S. branches are eligible for substituted compliance, use of a separate credit support agreement to document transactions with a non-U.S. CSE's U.S. branch should only be necessary where foreign margin requirements are not comparable. Although the Commission acknowledges that the non-U.S. CSE may need to use a separate credit support agreement for U.S. branch transactions in this limited case, the Commission nevertheless believes that it would not be appropriate to extend the Exclusion to U.S. branches of non-U.S. CSEs for the reasons discussed above.

[159] The term "emerging market" is not used in the Final Rule because some jurisdictions covered by this provision of the Final Rule are not aptly described by that term.

[160] *See, e.g.,* ABA/ABASA at 3–5; IIB/SIFMA at 3, 11–13; ISDA at 2, 9–10; JBA at 10.

[161] *See* ABA/ABASA at 5. *See also* ISDA at 9–10 (further recommending that Commission impose recordkeeping requirement as condition to exemption, as was included in Guidance).

[162] *See* ABA/ABASA at 4–5; IIB/SIFMA at 13. *See also* ISDA at 9 ("emerging market counterparty" should be defined as any non-U.S. person that is not guaranteed by a U.S. person and that is not located in one of six jurisdictions identified in Guidance as having submitted requests for comparability determinations).

[163] *See* ABA/ABASA at 1 n.5 (exemption should apply to "U.S.-based banking organizations, however they are operating in emerging markets, including, but not limited to, through a foreign branch of a prudentially-regulated CSE"); IIB/SIFMA; ISDA.

[164] *See* ABA/ABASA at 1 n.5, 3; IIB/SIFMA at 12; ISDA at 9.

[165] *See* ISDA at 10 (availability of the exemption should be extended to FCSs if Commission does not otherwise make Exclusion available to them).

[166] *See* ABA/ABASA at 5; IIB/SIFMA at 13 (approach would be appropriate given that risk to U.S. guarantor provides basis for extraterritorial application of margin rules to U.S. Guaranteed CSEs).

[167] *See, e.g.,* ABA/ABASA at 4 (local banking sector may lack operational infrastructure to support daily exchange of margin or third-party custodial arrangements); IIB/SIFMA (local legal regime may not recognize concept of netting); ISDA at 4 (emerging market counterparties may be unable to comply with U.S. margin requirements).

[168] *See* ABA/ABASA at 4 (absent an exemption, U.S. CSEs could lose not only derivatives business but associated commercial and investment banking relationships); IIB/SIFMA at 12 (emerging market counterparties are likely to move business away from U.S. CSEs and U.S. Guaranteed CSEs in order to avoid being subject to margin requirements); ISDA at 10 (dealing activities that would fall within exemption may be an "integral element" of CSEs' global business).

[169] *See* ABA/ABASA at 3; IIB/SIFMA at 12–13; ISDA at 10.

[170] *See* IIB/SIFMA at 12 (arguing that de minimis nature of exemption ensures that nexus of swap activity to the United States is not "significant").

[171] For convenience, the term "non-segregation jurisdiction" is used in the preamble of this release.

[172] The Final Margin Rule addresses the manner in which the margin collected or posted by a CSE must be held and requires, among other things, that the CSE must have a custodial agreement prohibiting rehypothecation or otherwise transfer the initial margin held by the custodian. *See* 17 CFR 23.157. The custodial requirements are critical to ensuring the proper segregation and protection of CSE funds.

This provision is narrowly tailored to limit its availability to FCSs (and foreign branches of U.S. CSEs) in foreign jurisdictions where compliance with the Final Margin Rule's custodial requirements is effectively precluded due to impediments inherent in the relevant foreign jurisdiction.[177] In addition, this provision is only available in such jurisdictions if the following conditions are satisfied. First, the CSE's counterparty must be a non-U.S. person that is not a CSE, and the counterparty's obligations under the swap must not be guaranteed by a U.S. person.[178] Second, the CSE must collect initial margin in cash on a gross basis, and post and collect variation margin in cash, in accordance with the Final Margin Rule.[179] The collection of margin on a gross basis ensures that the CSE has adequate collateral in the event of a counterparty or custodial default; similarly, not requiring the CSE to post initial margin minimizes the amount of collateral that may not be recovered if the CSE's counterparty defaults. Third, for each broad risk category set out in section 23.154(b)(2)(v) of the Final Margin Rule,[180] the total outstanding notional value of all uncleared swaps in that broad risk category, as to which the CSE is relying on section 23.160(e), may not exceed 5 percent of the CSE's total outstanding notional value for all uncleared swaps in the same broad risk category. Accordingly, a 5 percent limit applies to each of the four broad risk categories set forth in section 23.154(b)(2)(v): Credit, equity, foreign exchange and interest rates (considered together as a single asset class), and commodities. Fourth, the CSE must have policies and procedures ensuring that it is in compliance with all of the requirements of this exception. Fifth, the CSE must maintain books and records properly documenting that all of the requirements of this exception are satisfied.[181]

In adopting this provision, the Commission considered the various alternatives endorsed by commenters, including the adoption of a blanket exclusion, subject to a transactional volume limit (*e.g.*, using a 5 percent limit patterned after a limited exclusion for certain jurisdictions in the Guidance, as discussed in section II.B.4.a. above). However, given the importance of the Final Margin Rule's requirements to the protection of CSEs and the broader financial system, and the potential for a blanket exclusion to incentivize market participants to structure their swap business solely to avoid application of the Commission's margin requirements, the Commission believes that a more targeted approach that provides relief from only from the requirement to post initial margin and the custodial arrangement requirements that pertain to initial margin collected by a CSE, as described above, is appropriate. While the Commission believes that the relief provided by the special provision is appropriate because FCSs and foreign branches of U.S. CSEs would otherwise be effectively precluded from entering swaps in non-segregation jurisdictions, the Commission also believes that, in order to protect the safety and soundness of FCSs and foreign branches of U.S. CSEs relying on the special provision, the exception from the specified requirements is appropriately limited, as these CSEs are integral to the stability of the U.S. financial system.

Therefore, rather than provide an exception from all of the Commission's margin requirements to CSEs that engage in swaps activities in non-segregation jurisdictions up to a 5% limit, as suggested by some commenters, the special provision only excepts qualifying FCSs and foreign branches of U.S. CSEs from certain specified requirements, subject to specified conditions (including a 5 percent limit in each of four broad risk categories set forth in § 23.154(b)(2)(v)), as described above. The Commission believes that imposing a 5 percent limit in each of the four broad risk categories set out in § 23.154(b)(2)(v) is necessary because the FCS (or foreign branch of a U.S. CSE) may have a large notional amount outstanding in the foreign exchange and interest rate category (which is considered together as a single class) which would effectively eviscerate any limit in other lower notional risk categories.

The Commission believes that the total outstanding notional value of all uncleared swaps as to which an FCS relies on § 23.160(e) should not exceed 5 percent of the FCS's total outstanding notional amount of uncleared swaps (in each of the four broad risk categories), rather than the total notional outstanding amount of uncleared swaps of its ultimate parent entity. Using the ultimate parent entity's swap activity as the basis for the formula could allow the FCS to engage in significant levels of swap activity in non-segregation jurisdictions based on swap activities of its affiliates, rendering the 5 percent limit meaningless. In addition, as an FCS is a registered CSE, its swap activities with U.S. persons were sufficient to require its registration in the United States, and therefore its swap activity in the non-segregation jurisdiction would never account for all of the CSE's swap dealing activity.

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[173] *See* 17 CFR 23.152(b).

[174] *See* 17 CFR 23.157(b). The Commission notes that with respect to initial margin collected by a qualifying CSE in a non-segregation jurisdiction in reliance on § 23.160(e), § 23.157(c) also would not apply to initial margin that is collected by the CSE. Section 23.157(c) requires a CSE to enter a custodial agreement meeting specified requirements with respect to any funds that the CSE holds (*i.e.*, initial margin posted or collected by the CSE). Because CSEs that rely on § 23.160(e) are not required to hold collateral in accordance with § 23.157(b) for initial margin that they collect, they also would not be required to comply with § 23.157(c) with respect to initial margin that they collect.

[175] This provision only provides relief from the custodial requirement for collection of initial margin in § 23.157(b). Accordingly, FCSs and foreign branches of U.S. CSEs remain subject to the requirements of § 23.157(a) and (c) of the Final Margin Rule with respect to initial margin that is posted in a non-segregation jurisdiction (which the CSE would be unable to comply with in a non-segregation jurisdiction).

[176] If the special provision for non-segregation jurisdictions is available, then the special provision for non-netting jurisdictions (discussed in the next section) would not be available even if the relevant foreign jurisdiction is also a "non-netting jurisdiction." As explained in *supra* note 174, because CSEs that rely on § 23.160(e) are not required to hold collateral in accordance with § 23.157(b) for initial margin that they collect, they would not be required to comply with § 23.157(c) with respect to initial margin that they collect.

[177] The special provision applies where inherent limitations in the legal or operational infrastructure in the applicable foreign jurisdiction make it impracticable for the FCS (or foreign branch of a U.S. CSE) and its counterparty to post initial margin in compliance with the custodial requirements of § 23.157 of the Final Margin Rule. The special provision does not apply if the CSE that is subject to the foreign regulatory restrictions is permitted to post collateral for the uncleared swap in compliance with the custodial arrangements of § 23.157 in the United States or a jurisdiction for which the Commission has issued a comparability determination with respect to § 23.157. *See* 17 CFR 23.160(e)(1) and (2).

[178] The Commission would expect the CSE's counterparty to be a local financial end user that is required to comply with the foreign jurisdiction's laws and that is prevented by regulatory restrictions in the foreign jurisdiction from posting collateral for the uncleared swap in compliance with the custodial arrangements of § 23.157 in the United States or a jurisdiction for which the Commission has issued a comparability determination under the Final Rule, even using an affiliate.

[179] The CSE must collect initial margin in accordance with § 23.152(a) on a gross basis, in the form of cash pursuant to § 23.156(a)(1)(i) and post and collect variation margin in accordance with § 23.153(a) in the form of cash pursuant to § 23.156(a)(1)(i). *See* § 23.160(e)(4) of the Final Rule.

[180] Section 23.154(b)(2)(v) of the Final Margin Rule permits a CSE to use an internal initial margin model that reflects offsetting exposures, diversification, and other hedging benefits within four broad risk categories: Credit, equity, foreign exchange and interest rates (considered together as a single asset class), and commodities when calculating initial margin for a particular counterparty if the uncleared swaps are executed under the same "eligible master netting agreement." *See* 17 CFR 23.154(b)(2)(v).

[181] *See* 17 CFR 23.160(e).

5. Special Provision for Non-Netting Jurisdictions

a. Comments

Commenters generally agreed that, at a minimum, the Commission should provide an exception for swaps with counterparties located in jurisdictions in which netting, collateral or third party custodial arrangements may not be legally effective, including in a counterparty's insolvency.[182] ISDA and JBA proposed that an exception for non-netting jurisdictions should apply up to 5 percent of the aggregate notional amount of a CSE's uncleared swaps.[183] They argued that, without enforceable netting and collateral arrangements, a bankruptcy administrator could "cherry pick" when determining the return of posted collateral in the event of insolvency.[184] ISDA further argued that imposing margin in such cases could severely limit swaps activity in non-netting jurisdictions and cause significant disruptions in financial markets.[185]

ISDA and JBA further recommended that, absent an exception for non-netting jurisdictions, CSEs should have at least some exception from the requirement to collect or post margin.[186] According to ISDA, without such an exception, a CSE could be prevented from applying collateral to the obligations of the counterparty and face difficulties in recovering it.[187] ISDA argued that posting margin could therefore increase risk to the CSE, while an exception could bypass segregation problems in the non-netting jurisdiction.[188]

b. Final Rule

The Commission is adopting a special provision, also included in the Prudential Regulators' Final Margin Rule, for non-netting jurisdictions.[189] Under the Final Rule, a CSE that cannot conclude, with a well-founded basis, that the netting agreement with a counterparty in a foreign jurisdiction meets the definition of an "eligible master netting agreement" set forth in the Final Margin Rule may nevertheless net uncleared swaps in determining the amount of margin that it posts, provided that certain conditions are met.[190] In order to avail itself of this special provision, the CSE must treat the uncleared swaps covered by the agreement on a gross basis in determining the amount of initial and variation margin that it must collect, but may net those uncleared swaps in determining the amount of initial and variation margin it must post to the counterparty, in accordance with the netting provisions of the Final Margin Rule.[191] Requiring CSEs to calculate and collect initial margin on a gross basis is intended to ensure that the CSE can obtain the collateral posted with the counterparty in the event of counterparty default. As with the special provision for non-segregation jurisdictions in section 23.160(e) of the Final Rule, this provision is carefully tailored to allow CSEs to enter into uncleared swaps in "non-netting" jurisdictions but without abandoning the key protections behind the netting requirement under the Final Margin Rule. A CSE that enters into uncleared swaps in "non-netting" jurisdictions in reliance on this provision must have policies and procedures ensuring that it is in compliance with the special provision's requirements, and maintain books and records properly documenting that all of the requirements of this exception are satisfied.[192]

The Commission considered ISDA's request that it adopt a blanket exclusion, subject to a percentage limitation based on the level of swap activity. However, the Commission believes that a blanket exclusion, even with a transactional limit, presents a significant risk that the safety and soundness of a CSE engaged in swaps in non-netting jurisdictions would be insufficiently protected because, without the collection of sufficient margin, the CSE could be unduly exposed to counterparty default. The Commission also considered, but determined to not adopt, ISDA's request that posting to counterparties in non-netting jurisdictions not be required.[193] Because the posting requirement serves to limit the ability of a CSE to assume excessive risk, the Commission believes that CSEs should be required to post margin in order to advance the objectives of the margin mandate.

C. Comparability Determinations

As discussed above, consistent with CEA section 2(i) and comity principles, the Final Rule permits eligible CSEs to rely on substituted compliance to the extent that the Commission determines the relevant foreign jurisdiction's margin requirements are comparable to the Commission's. Specifically, the Final Rule outlines a framework for the Commission's comparability determinations, including eligibility and submission requirements for requesters and the Commission's standard of review for making comparability determinations.[194]

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[182] *See* ABA/ABASA at 5 n.14; IIB/SIFMA at 13 n.44; ISDA at 10 (requesting an exemption for jurisdictions where getting a "clean" netting or collateral opinion is "not possible"); JBA at 10.

[183] *See* ISDA at 10; JBA at 10.

[184] *See* ISDA at 10 (further arguing that a CSE may not be able to effectively foreclose on margin in event of a counterparty default); JBA at 10.

[185] *See* ISDA at 10.

[186] *See* ISDA at 10–11 (requesting exemption from requirement to post initial margin); JBA at 10 (requesting exemption from both initial and variation margin requirements because, under such conditions, amount of variation margin to be posted or collected cannot be fixed).

[187] *See* ISDA at 11.

[188] *See id.*

[189] As used in this release, a "non-netting jurisdiction" is a jurisdiction in which a CSE cannot conclude, with a well-founded basis, that the netting agreement with a counterparty in that foreign jurisdiction meets the definition of an "eligible master netting agreement" set forth in the Final Margin Rule. *See* 17 CFR 23.151.

[190] The Final Margin Rule permits offsets in relation to either initial margin or variation margin calculation when (among other things), the offsets related to swaps are subject to the same eligible master netting agreement. This ensures that CSEs can effectively foreclose on the margin in the event of a counterparty default, and avoids the risk that the administrator of an insolvent counterparty will "cherry-pick" from posted collateral to be returned.

[191] As noted above, in the event that the special provision for non-segregation jurisdictions applies to a CSE, then the special provision for non-netting jurisdictions would not apply to the CSE even if the relevant jurisdiction is also a "non-netting jurisdiction." In this circumstance, the CSE must collect the gross amount of initial margin in cash (but would not be required to post initial margin), and post and collect variation margin in cash in accordance with the requirements of the special provision for non-segregation jurisdictions, as discussed in section II.B.4.b.

[192] *See* § 23.160(d) of the Final Rule.

[193] The Commission agrees with commenters that without enforceable netting and collateral arrangements, there is a risk that the administrator of an insolvent counterparty will "cherry-pick" from posted collateral to be returned in the event of insolvency. This would result in an increase in the risk in posting collateral, because a CSE may not be able to effectively foreclose on the margin in the event its counterparty defaults.

[194] *See* 17 CFR 23.160(c).

1. Proposed Rule

As proposed, section 23.160(c) established a process for requesting comparability determinations. Specifically, the proposed rule identified persons eligible to request a comparability determination (CSEs eligible to rely on substituted compliance and any relevant foreign regulatory authorities) and the information and documentation they should provide the Commission, including how the relevant foreign jurisdiction's margin requirements address the various elements of the Commission's margin regime (*e.g.*, the products and entities subject to margin requirements).

The proposed rule also identified several factors the Commission would consider in making a comparability determination, such as how the relevant foreign margin requirements compare to International Standards[195] and whether they achieve comparable outcomes to the Commission's requirements. The Commission explained that its analysis would follow an outcome-based approach, one that would focus on evaluating the outcomes and objectives of the foreign margin requirements and not require them to be identical to the Commission's margin requirements.[196] The Commission further explained that it would review a foreign margin regime's comparability on an element-by-element basis, such that a foreign jurisdiction's margin requirements could be deemed comparable with respect to some elements of the Commission's margin requirements and not others.[197] The Commission made clear, however, that consistent with its outcome-based approach, a comparability determination could be appropriate even if the foreign jurisdiction approaches an element differently.[198]

The proposed rule concluded by explaining the regulatory effect of complying with a foreign jurisdiction's margin requirements in reliance on a comparability determination, such that a violation of a foreign margin requirement could constitute a violation of the Commission's corresponding requirement. It also codified the Commission's authority to condition or otherwise modify any comparability determination it issues.

The Commission requested comment on all aspects of proposed § 23.160(c).[199]

2. Comments

Commenters generally focused on the Commission's proposed approach to evaluating the comparability of a foreign jurisdiction's margin regime.[200] Commenters supported an approach that would focus on the regulatory objectives and outcomes of the relevant margin regimes and not require uniformity with the Commission's rule provisions.[201] JBA, for instance, urged the Commission not to deny a comparability determination because a Commission rule is "stricter," but to focus on whether the substance of the foreign jurisdiction's rules effectively achieves the objective of mitigating risk.[202]

Commenters expressed concern, however, that the Commission's proposed approach was overly complicated and would undermine an outcome-based approach.[203] IIB/SIFMA described the Commission's proposed approach as too "granular," requiring "consistency at a level of detail that ignores the overall risk mitigating impact" of a foreign jurisdiction's margin regime.[204] IIB/SIFMA suggested that the "test for comparability" should be "whether differences between the regimes would, in the aggregate, create a significant and unacceptable level of risk to CSEs or the U.S. financial system."[205]

Commenters also expressed concern that issuing comparability determinations with respect to some but not all of a foreign jurisdiction's margin requirements would be challenging and costly to implement.[206] As a result, market participants would either default to the Commission's margin requirements, undercutting the benefits of substituted compliance,[207] or modify their cross-border activities to avoid Commission regulation, increasing market fragmentation.[208] ISDA further argued that an element-by-element approach would be inconsistent with the goals of the BCBS–IOSCO framework to avoid "duplicative or conflicting margin requirements" and ensuring "substantial certainty" as to which country's margin rules apply.[209] Commenters urged the Commission to evaluate and issue a comparability determination for a foreign jurisdiction's margin regime as a whole.[210]

A majority of commenters also encouraged the Commission to make consistency with the BCBS–IOSCO framework the primary focus of its comparability determinations.[211] FSR suggested that the Commission ignore whether the foreign margin requirements achieve comparable outcomes to the Commission's margin requirements[212] and make consistency with International Standards the sole basis of its analysis.[213] FSR argued that the "purpose and driving force" of the BCBS–IOSCO framework was to create a "uniform global standard" and that the Commission would undermine that goal if it were to deny a comparability determination when the foreign margin regime conforms to International Standards.[214] Thus, FSR recommended that the Commission issue a comparability determination to any regime that complies with the International Standards despite any divergence from the Commission's rules.[215] IIB/SIFMA argued that margin regimes that adhere to the BCBS–IOSCO framework are "highly unlikely" to demonstrate "material differences" in the degree to which they reduce aggregate risk,[216] adding that issuing comparability determinations based on consistency with the BCBS–IOSCO framework would further the goal of international harmonization promoted by BCBS–IOSCO and Congress.[217]

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[195] *See* proposed 17 CFR 23.160(a)(3) (defining "International Standards" as based on the BCBS–IOSCO framework).

[196] *See* Proposal, 80 FR at 41389.

[197] *See id.*

[198] *See id.* ("[T]he Commission would evaluate whether a foreign jurisdiction has rules and regulations that achieve comparable outcomes. If it does, the Commission believes that a comparability determination may be appropriate, even if there may be differences in the specific elements of a particular regulatory provision.").

[199] The Commission also requested comment on the scope of the Commission's proposed substituted compliance regime, whether the Commission should develop an interim process for comparability determinations that would take into account differing implementation timeliness for margin rules by other foreign jurisdictions, and the need for an emerging markets exception. Comments received in response to these questions were addressed above.

[200] *See* proposed 17 CFR 23.160(c)(2)–(3); Proposal, 80 FR at 41389–90.

[201] *See, e.g.,* AIMA/IA at 3–4 (absent "automatic substituted compliance" for any transaction involving an entity from a jurisdiction that participated in the WGMR, Commission should make comparability determinations based "on broad comparability of requirements rather than detailed correspondence of rules"); ICI Global at 9–10; IIB/SIFMA at 3; ISDA at 7; JBA at 9; Vanguard at 3.

[202] *See* JBA at 9 (for example, while Commission's proposed margin rule with respect to eligible collateral for variation margin was narrower in scope than rule proposed by European or Japanese authorities, foreign regulations are not necessarily less effective from a risk mitigation perspective).

[203] *See, e.g.,* ICI Global at 10 (proposed approach to determining comparability is "unnecessarily complicated" and effectively requires comparability with respect to "each particular aspect" of the foreign jurisdiction's margin regime); ISDA at 7 ("complexity and specificity" of Commission's proposed approach is "not consistent with a general outcome-based approach").

[204] *See* IIB/SIFMA at 9 (element-by-element approach would result in "stricter-rule-applies" approach).

[205] *See id.* at 10 (margin regimes that comply with International Standards would likely satisfy such a test).

[206] *See, e.g.,* PensionsEurope at 2 (there are "some benefits" to an element-by-element approach but, by creating potential for partial comparability determinations, proposed rule would add "a significant amount of complexity" and "likely create more problems than it solves"); SIFMA AMG at 8 ("the potential for piecemeal comparability determinations" would lead to "uncertainty, compliance difficulties and the potential for margin disputes"); Vanguard at 4–5 (market participants would be required to develop and implement a new system designed to apply the Commission's comparability determinations and ensure simultaneous compliance with two sets of rules).

[207] *See, e.g.,* ICI Global at 10; IIB/SIFMA at 9; SIFMA at 8 (Commission's prior issuance of partial comparability determinations with respect to swap trading relationship documentation led to confusion and disagreements regarding which rule sections may be complied with via substituted compliance).

[208] *See* IIB/SIFMA at 9; SIFMA AMG at 7.

[209] *See* ISDA at 8 (highlighting background discussion of element 7 of the BCBS–IOSCO framework (interaction of national regimes in cross-border transactions), which encourages cooperation among regulatory regimes to produce "sufficiently consistent and non-duplicative" margin requirements).

[210] *See, e.g.,* ICI Global at 2, 10 (Commission should "consider [] the margin rules of a jurisdiction in their entirety" and not "mak[e] determinations for each element of the margin rules"); IIB/SIFMA at 9–10; SIFMA AMG at 8; Vanguard at 4–5.

[211] *See, e.g.,* AIMA/IA at 3; FSR at 2–5; ISDA at 7; SIFMA AMG at 8; Vanguard at 5.

AFR, on the other hand, argued that foreign margin rules should not qualify for substituted compliance on the basis that they follow International Standards alone.[218] AFR stated that the Commission's proposed margin rules evidenced "a number of important differences" from the BCBS–IOSCO framework and that, given the broad availability of substituted compliance in the proposed rule, issuing comparability determinations solely on the basis of consistency with International Standards could lead to "excessive opportunities for substituted compliance."[219]

3. Final Rule

After a careful review of the comments, the Commission is adopting § 23.160(c) as proposed, but is providing some additional clarifications in response to commenters. The rule begins by identifying persons eligible to request a comparability determination with respect to the Commission's margin requirements, including any CSE that is eligible for substituted compliance under rule § 23.160[220] and any foreign regulatory authority that has direct supervisory authority over one or more CSEs and that is responsible for administering the relevant foreign jurisdiction's margin requirements.[221] Eligible persons may request a comparability determination individually or collectively and with respect to some or all of the Commission's margin requirements. Eligible CSEs may wish to coordinate with their home regulators and other CSEs in order to simplify and streamline the process. The Commission will make comparability determinations on a jurisdiction-by-jurisdiction basis.

Persons requesting comparability determinations should provide the Commission with certain documents and information in support of their request. Notably, the Final Rule provides that requesters should provide copies of the relevant foreign jurisdiction's margin requirements[222] and descriptions of their objectives,[223] how they differ from the International Standards,[224] and how they address the elements of the Commission's margin requirements.[225] With regard to how the foreign margin requirements address the elements of the Commission's margin requirements, the description should identify the specific legal and regulatory provisions that correspond to each element and, if necessary, whether the relevant foreign jurisdiction's margin requirements do not address a particular element.[226] Requesters should also provide a description of the ability of the relevant foreign regulatory authority or authorities to supervise and enforce compliance with the relevant foreign jurisdiction's margin requirements[227] and any other information and documentation the Commission deems appropriate.[228]

The Final Rule identifies certain key factors that the Commission will consider in making a comparability determination. Specifically, the Commission will consider the scope and objectives of the relevant foreign jurisdiction's margin requirements;[229] whether the relevant foreign jurisdiction's margin requirements achieve comparable outcomes to the Commission's corresponding margin requirements;[230] and the ability of the relevant regulatory authority or authorities to supervise and enforce compliance with the relevant foreign jurisdiction's margin requirements.[231]

As indicated in the proposed rule, the Final Rule reflects an outcome-based approach to assessing the comparability of a foreign jurisdiction's margin requirements. Instead of demanding strict uniformity with the Commission's margin requirements, the Commission will evaluate the objectives and outcomes of the foreign margin requirements in light of foreign regulator(s)' supervisory and enforcement authority. Recognizing that jurisdictions may adopt different approaches to achieving the same outcome, the Commission will focus on whether the foreign jurisdiction's margin requirements are comparable to the Commission's in purpose and effect, not whether they are comparable in every aspect or contain identical elements.

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[212] *See* proposed 17 CFR 23.160(c)(3)(iii).

[213] *See* FSR at 5–6.

[214] *See id.* at 3–4 (pointing to differences in the approaches proposed by the European Market Infrastructure Regulation and the Commission with regard to certain topics (*e.g.*, eligible collateral for variation margin) and expressing concern that, under the Proposal, the Commission would reject comparability even though both proposed approaches are consistent with BCBS–IOSCO framework).

[215] *See id.* at 3. *See also* Vanguard at 5 ("unique local legal or market structure issues" may render certain individual elements of a foreign jurisdiction's margin regime not comparable to Commission's margin rules but foreign regime's "overall outcome" may nevertheless be consistent with BCBS–IOSCO framework).

[216] *See id.* at 2 (BCBS–IOSCO framework-compliant regimes would impose "full, daily variation margin requirements and stringent initial margin requirements").

[217] *See id.* at 3 (citing Dodd-Frank section 752(a)). *See also* SIFMA AMG 7.

[218] *See* AFR at 7.

[219] *See id. See also* IATP at 4 (provide appendix illustrating "comparable and quantitative outcomes of swaps margining in other jurisdictions with those under Commission authority, once margining requirements and margin calculation methodology are agreed in those jurisdictions").

[220] *See* 17 CFR 23.160(c)(1)(i).

[221] *See* 17 CFR 23.160(c)(1)(ii).

[222] *See* 17 CFR 23.160(c)(2)(v).

[223] *See* 17 CFR 23.160(c)(2)(i).

[224] *See* 17 CFR 23.160(c)(2)(iii). *See also* 17 CFR 23.160(a)(3) (defining "International Standards" as based on the BCBS–IOSCO framework).

[225] *See* 17 CFR 23.160(c)(2)(ii) (identifying the elements as: (A) The products subject to the foreign jurisdiction's margin requirements; (B) the entities subject to the foreign jurisdiction's margin requirements; (C) the treatment of inter-affiliate derivative transactions; (D) the methodologies for calculating the amounts of initial and variation margin; (E) the process and standards for approving models for calculating initial and variation margin models; (F) the timing and manner in which initial and variation margin must be collected and/or paid; (G) any threshold levels or amounts; (H) risk management controls for the calculation of initial and variation margin; (I) eligible collateral for initial and variation margin; (J) the requirements of custodial arrangements, including segregation of margin and rehypothecation; (K) margin documentation requirements; and (L) the cross-border application of the foreign jurisdiction's margin regime). Section 23.160(c)(2)(ii) largely tracks the elements of the BCBS–IOSCO framework, but breaks them down into their components as appropriate to ensure ease of application.

[226] *See id.*

[227] *See* 17 CFR 23.160(c)(2)(iv) (requesting that such description discuss the powers of the foreign regulatory authority or authorities to supervise, investigate, and discipline entities for compliance with the margin requirements and the ongoing efforts of the regulatory authority or authorities to detect and deter violations of the margin requirements).

[228] *See* 17 CFR 23.160(c)(2)(vi). *See also* 17 CFR 23.160(c)(7) (delegating authority to request additional information and/or documentation to the Director of the Division of Swap Dealer and Intermediary Oversight, or such other employee or employees as the Director may designate from time to time).

[229] *See* 17 CFR 23.160(c)(3)(i). *See also* 17 CFR 23.160(a)(3) (defining "International Standards" as based on the BCBS–IOSCO framework).

[230] *See* proposed 17 CFR 23.160(c)(3)(ii). As discussed above, the Commission's Final Margin Rule is based on the International Standards; therefore, the Commission expects that the relevant foreign margin requirements would conform to the International Standards at minimum in order to be deemed comparable to the Commission's corresponding margin requirements.

[231] *See* 17 CFR 23.160(c)(3)(iii). *See also supra* note 227; 17 CFR 23.160(c)(3)(iv) (indicating the Commission would also consider any other relevant facts and circumstances).

As commenters noted, the Commission was actively involved in developing the BCBS–IOSCO framework, and the Commission believes that the minimum standards it establishes are consistent with the objectives of the Commission's own margin requirements. However, while the BCBS–IOSCO framework establishes minimum standards that are consistent with the objectives of the Commission's own margin requirements, the Commission notes that just because a foreign jurisdiction's margin requirements are consistent with International Standards does not necessarily mean that they will be comparable to the Commission's requirements.[232] Consequently, in the Commission's view, consistency with International Standards is necessary but may not be sufficient to finding comparability.[233]

As stated in the proposed rule, the Commission will review the foreign margin requirements on an element-by-element basis.[234] Margin regimes are complex structures made up of a number of interrelated components, and differences in how jurisdictions approach and assemble those components are inevitable, even among jurisdictions that base their margin requirements on the principles and requirements set forth in the BCBS–IOSCO framework. In order to arrive at a meaningful and complete comparability determination, the Commission must therefore engage in a fact-specific analysis to develop a clear understanding of the elements of the foreign margin regime and how they interact. The Commission believes this level of review will support its outcome-based approach by aiding its assessment of whether such differences affect comparability.

As indicated in the proposed rule, the Commission is allowing for the possibility that a comparability determination may not include all elements of a foreign jurisdiction's margin regime.[235] The Commission believes that this position is preferable to an all-or-nothing approach, in which the Commission would be unable to make a comparability determination for an entire jurisdiction if one or more aspects of the foreign jurisdiction's margin regime results in an outcome that is critically different from that of the Commission's.

The Final Rule provides that any CSE that, in accordance with a comparability determination, complies with a foreign jurisdiction's margin requirements will be deemed in compliance with the Commission's corresponding margin requirements.[236] Accordingly, if the Commission determines that a CSE has failed to comply with the relevant foreign margin requirements, it could initiate an action for a violation of the Commission's margin requirements. In addition, all CSEs remain subject to the Commission's examination and enforcement authority regardless of whether they rely on a comparability determination. Although the Final Rule does not obligate the Commission to consult with or rely on the advice of the foreign regulatory authority in making its determination regarding whether a violation of foreign margin requirements has occurred, the Commission notes that Commission staff may consult with the relevant foreign regulatory authority to assist the Commission in making its determination.

The Final Rule concludes by codifying the Commission's authority to impose any terms and conditions it deems appropriate in issuing a comparability determination,[237] and to further condition, modify, suspend, terminate or otherwise restrict any comparability determination it has issued in its discretion.[238]

Comparability determinations issued by the Commission will require that the Commission be notified of any material changes to information submitted in support of a comparability determination, including, but not limited to, changes in the relevant foreign jurisdiction's supervisory or regulatory regime. The Commission also expects that the relevant foreign regulator will enter into, or will have entered into, an appropriate memorandum of understanding ("MOU") or similar arrangement with the Commission in connection with a comparability determination.[239]

As stated above, the Commission recognizes that systemic risks arising from the global and interconnected swap market must be addressed through coordinated regulatory requirements for margin across international jurisdictions. Accordingly, the Commission will continue its practice of actively engaging market participants and consulting closely with foreign regulators to encourage the international harmonization and coordination of margin requirements for uncleared swaps and to minimize market disruptions.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities.[240] The Commission previously has established certain definitions of "small entities" to be used in evaluating the impact of its regulations on small entities in accordance with the RFA.[241] The final regulation establishes a mechanism for CSEs [242] to satisfy margin requirements by complying with comparable margin requirements in the relevant foreign jurisdiction as described in paragraph (c) of the Final Rule,[243] but only to the extent that the Commission makes a determination that complying with the laws of such foreign jurisdiction is comparable to complying with the corresponding margin requirement(s) for which the determination is sought.

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[232] The BCBS–IOSCO framework leaves certain elements open to interpretation (*e.g.*, the definition of "derivative") and expressly invites regulators to build on certain principles as appropriate. *See, e.g.*, Element 4 (eligible collateral) (national regulators should "develop their own list of eligible collateral assets based on the key principle, taking into account the conditions of their own markets"); Element 5 (initial margin) (the degree to which margin should be protected would be affected by "the local bankruptcy regime, and would vary across jurisdictions"); Element 6 (transactions with affiliates) ("Transactions between a firm and its affiliates should be subject to appropriate regulation in a manner consistent with each jurisdiction's legal and regulatory framework.").

[233] As the Commission noted above, the Final Margin Rule included substantial modifications from the Proposed Margin Rule that further aligned the Commission's margin requirements with International Standards and, as a result, the potential for conflict with foreign margin requirements should be reduced. *See supra* note 29. The Commission further notes that whether a particular margin requirement in a foreign jurisdiction is comparable to the Commission's corresponding requirement entails a fact-specific analysis.

[234] *See* 17 CFR 23.160(c)(2) (specifying that persons requesting comparability determinations should provide the Commission with documentation and information relating to each element of the Commission's margin requirements).

[235] For example, the Commission may determine that a foreign jurisdiction's margin regime is comparable with respect to its variation margin requirements but not with respect to custodial arrangements, including segregation and rehypothecation requirements.

[236] See 17 CFR 23.160(c)(4).

[237] *See* 17 CFR 23.160(c)(5).

[238] *See* 17 CFR 23.160(c)(6). For instance, a comparability determination may require modification or termination if a key basis for the determination ceases to be true.

[239] Under Commission regulations 23.203 and 23.606, registered swap dealers and major swap participants must maintain all records required by the CEA and the Commission's regulations in accordance with Commission regulation 1.31 and keep them open for inspection by representatives of the Commission, the United States Department of Justice, or any applicable prudential regulator. *See* 17 CFR 23.203, 23.606. The Commission further expects that prompt access to books and records and the ability to inspect and examine a non-U.S. CSE will be a condition to any comparability determination.

The Commission previously has determined that swap dealers and major swap participants are not small entities for purposes of the RFA.[244] Thus, the Commission is of the view that there will not be any small entities directly impacted by this rule.

The Commission notes that under the Final Margin Rule, swap dealers and major swap participants would only be required to collect and post margin on uncleared swaps when the counterparties to the uncleared swaps are either other swap dealers and major swap participants or financial end users. As noted above, swap dealers and major swap participants are not small entities for RFA purposes. Furthermore, any financial end users that may be indirectly [245] impacted by the Final Rule would be similar to eligible contract participants ("ECPs"), and, as such, they would not be small entities.[246] Further, to the extent that there are any foreign financial entities that would not be considered ECPs, the Commission expects that there would not be a substantial number of these entities significantly impacted by the Final Rule. As noted above, most foreign financial entities would likely be ECPs to the extent they would transact in uncleared swaps. The Commission expects that only a small number of foreign financial entities that are not ECPs, if any, would transact in uncleared swaps. In addition, the material swaps exposure threshold for financial end users in the Final Margin Rule reinforces the Commission's expectation that only a small number of entities would be affected by the Final Rule.

Accordingly, the Commission finds that there will not be a substantial number of small entities impacted by the Final Rule. Therefore, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA") [247] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. This final rulemaking will result in the collection of information requirements within the meaning of the PRA, as discussed below. Responses to these collections of information will be required to obtain or retain benefits. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. One of the collections of information required by this final rulemaking, which is described below under the heading "Information Collection—Comparability Determinations," was previously included in the proposed rule and discussed in the Proposal. Accordingly, the Commission requested from the Office of Management and Budget ("OMB") a control number for that information collection. OMB assigned OMB control number 3038–0111. The title for this collection of information is "Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; Comparability Determinations with Margin Requirements." No comments were received on the paperwork burden associated with this information collection request. In addition, this final rulemaking includes two additional collections of information that were not previously proposed, which are described below under the headings "Information Collection—Non-Segregation Jurisdictions" and "Information Collection—Non-Netting Jurisdictions," respectively. Accordingly, the Commission, by separate notice published in the **Federal Register** concurrently with this Final Rule, will request approval by OMB of this new information collection under OMB Control Number 3038–0111.

1. Information Collection—Comparability Determinations

Section 731 of the Dodd-Frank Act amended the CEA to add, as section 4s(e) thereof, provisions concerning the setting of initial and variation margin requirements for swap dealers and major swap participants. Each swap dealer and major swap participant for which there is a Prudential Regulator, as defined in section 1a(39) of the CEA, must meet margin requirements established by the applicable Prudential Regulator, and each CSE must comply with the Commission's regulations governing margin. With regard to the cross-border application of the swap provisions enacted by Title VII of the Dodd-Frank Act, section 2(i) of the CEA provides the Commission with express authority over activities outside the United States relating to swaps when certain conditions are met. Section 2(i) of the CEA provides that the CEA's provisions relating to swaps enacted by Title VII of the Dodd-Frank Act (including Commission rules and regulations promulgated thereunder) shall not apply to activities outside the United States unless those activities (1) have a direct and significant connection with activities in, or effect on, commerce of the United States or (2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of Title VII.[248] Because margin requirements are critical to ensuring the safety and soundness of a CSE and supporting the stability of the U.S. financial markets, the Commission believes that its margin rules should apply on a cross-border basis in a manner that effectively addresses risks to the registered CSE and the U.S. financial system.

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[240] 5 U.S.C. 601 *et seq.*

[241] *See* 47 FR 18618 (Apr. 30, 1982) (finding that designated contract markets, future commission merchants, commodity pool operators and large traders are not small entities for RFA purposes).

[242] *See* 17 CFR 23.151 (defining "CSE" as a swap dealer or major swap participant for which there is no Prudential Regulator).

[243] *See* 17 CFR 23.160(c).

[244] *See* 77 FR 30596, 30701 (May 23, 2012); 77 FR 2613, 2620 (Jan. 19, 2012) (noting that like future commission merchants, swap dealers will be subject to minimum capital requirements, and are expected to be comprised of large firms, and that major swap participants should not be considered to be small entities for essentially the same reasons that it previously had determined large traders not to be small entities).

[245] The RFA focuses on direct impact to small entities and not on indirect impacts on these businesses, which may be tenuous and difficult to discern. *See Mid-Tex Elec. Coop., Inc.* v. *FERC,* 773 F.2d 327, 340 (D.C. Cir. 1985); *Am. Trucking Assns.* v. *EPA,* 175 F.3d 1027, 1043 (D.C. Cir. 1985).

[246] As noted in paragraph (1)(xii) of the definition of "financial end user" in § 23.151 of the Final Margin Rule, a financial end user includes a person that would be a financial entity described in paragraphs (1)(i)–(xi) of that definition, if it were organized under the laws of the United States or any State thereof. *See* 17 CFR 23.151. The Commission believes that this prong of the definition of financial end user captures the same type of U.S. financial end users that are ECPs, but for them being foreign financial entities. Therefore, for purposes of the Commission's RFA analysis, these foreign financial end users will be considered ECPs and therefore, like ECPs in the U.S., not small entities.

[247] 44 U.S.C. 3501 *et seq.*

[248] 7 U.S.C. 2(i).

As noted above, the Final Rule establishes margin requirements for uncleared swaps of CSEs, with substituted compliance available in certain circumstances, except as to a narrow class of uncleared swaps between a non-U.S. CSE and a non-U.S. counterparty that fall within the Exclusion. The Final Rule also establishes a procedural framework in which the Commission will consider permitting compliance with comparable margin requirements in a foreign jurisdiction to substitute for compliance with the Commission's margin requirements in certain circumstances. The Commission will consider whether the requirements of such foreign jurisdiction with respect to margin of uncleared swaps are comparable to the Commission's margin requirements.

Specifically, the Final Rule provides that a CSE that is eligible for substituted compliance may submit a request, individually or collectively, for a comparability determination.[249] Persons requesting a comparability determination may coordinate their application with other market participants and their home regulators to simplify and streamline the process. Once a comparability determination is made for a jurisdiction, it will apply for all entities or transactions in that jurisdiction to the extent provided in the determination, as approved by the Commission. In providing information to the Commission for a comparability determination, applicants must include, at a minimum, information describing any differences between the relevant foreign jurisdiction's margin requirements and International Standards,[250] and the specific provisions of the foreign jurisdiction that govern: (A) The products subject to the foreign jurisdiction's margin requirements; (B) the entities subject to the foreign jurisdiction's margin requirements; (C) the treatment of inter-affiliate derivative transactions; (D) the methodologies for calculating the amounts of initial and variation margin; (E) the process and standards for approving models for calculating initial and variation margin models; (F) the timing and manner in which initial and variation margin must be collected and/or paid; (G) any threshold levels or amounts; (H) risk management controls for the calculation of initial and variation margin; (I) eligible collateral for initial and variation margin; (J) the requirements of custodial arrangements, including segregation of margin and rehypothecation; (K) margin documentation requirements; and (L) the cross-border application of the foreign jurisdiction's margin regime.[251]

In addition, the Commission expects the applicant, at a minimum, to describe how the foreign jurisdiction's margin requirements address each of the above-referenced elements, and identify the specific legal and regulatory provisions that correspond to each element (and, if necessary, whether the relevant foreign jurisdiction's margin requirements do not address a particular element). Further, the applicant must describe the objectives of the foreign jurisdiction's margin requirements, the ability of the relevant regulatory authority or authorities to supervise and enforce compliance with the foreign jurisdiction's margin requirements, including the powers of the foreign regulatory authority or authorities to supervise, investigate, and discipline entities for noncompliance with the margin requirements and the ongoing efforts of the regulatory authority or authorities to detect and deter violations of the margin requirements. Finally, the applicant must furnish copies of the foreign jurisdiction's margin requirements (including an English translation of any foreign language document) and any other information and documentation that the Commission deems appropriate.[252]

In issuing a comparability determination, the Commission may impose any terms and conditions it deems appropriate. In addition, the Final Rule will provide that the Commission may, on its own initiative, further condition, modify, suspend, terminate, or otherwise restrict a comparability determination in the Commission's discretion. This could result, for example, from a situation where, after the Commission issues a comparability determination, the basis of that determination ceases to be true. In this regard, the Commission will require an applicant to notify the Commission of any material changes to information submitted in support of a comparability determination (including, but not limited to, changes in the foreign jurisdiction's supervisory or regulatory regime) as the Commission's comparability determination may no longer be valid.[253]

The collection of information that is proposed by this rulemaking is necessary to implement section 4s(e) of the CEA, which mandates that the Commission adopt rules establishing minimum initial and variation margin requirements for CSEs on all swaps that are not cleared by a registered derivatives clearing organization, and section 2(i) of the CEA, which provides that the provisions of the CEA relating to swaps that were enacted by Title VII of the Dodd-Frank Act (including any rule prescribed or regulation promulgated thereunder) apply to activities outside the United States that have a direct and significant connection with activities in, or effect on, commerce of the United States. Further, the information collection is necessary for the Commission to determine whether the requirements of the foreign rules are comparable to the Commission's rules.

As noted above, any CSE who is eligible for substituted compliance may make a request for a comparability determination. Currently, there are approximately 106 swap entities provisionally registered with the Commission. The Commission further estimates that of the approximately 106 swap entities that are provisionally registered, approximately 54 are CSEs that are subject to the Commission's margin rules as they are not subject to a Prudential Regulator. The Commission notes that any foreign regulatory agency that has direct supervisory authority over one or more CSEs and that is responsible to administer the relevant foreign jurisdiction's margin requirements may also apply for a comparability determination. Further, once a comparability determination is made for a jurisdiction, it will apply for all entities or transactions in that jurisdiction to the extent provided in the determination, as approved by the Commission. The Commission estimates that it will receive requests for a comparability determination from 17 jurisdictions, consisting of the 16 jurisdictions within the G20, plus Switzerland, and that each request will impose an average of 10 burden hours.

Based upon the above, the estimated hour burden for collection is calculated as follows:

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[249] A CSE may apply for a comparability determination only if the uncleared swap activities of the CSE are directly supervised by the authorities administering the foreign regulatory framework for uncleared swaps. Also, a foreign regulatory agency may make a request for a comparability determination only if that agency has direct supervisory authority to administer the foreign regulatory framework for uncleared swaps in the requested foreign jurisdiction.

[250] *See* 17 CFR 23.160(a)(3) (defining "International Standards" as based on the BCBS–IOSCO framework).

[251] *See* 17 CFR 23.160(c)(2)(ii).

[252] *See* 17 CFR 23.160(c)(2)(v) and (vi).

[253] The Commission expects to impose this obligation as one of the conditions to the issuance of a comparability determination.

Number of respondents: 17.

Frequency of collection: Once.

Estimated annual responses per registrant: 1.

Estimated aggregate number of annual responses: 17.

Estimated annual hour burden per registrant: 10 hours.

Estimated aggregate annual hour burden: 170 hours (17 registrants × 10 hours per registrant).

2. Information Collection—Non-Segregation Jurisdictions

Section 23.160(e) of the Final Rule provides that, in certain foreign jurisdictions where inherent limitations in the legal or operational infrastructure of the jurisdiction make it impracticable for the CSE and its counterparty to post initial margin for the uncleared swap pursuant to custodial arrangements that comply with the Commission's margin rules, an FCS or a foreign branch of a U.S. CSE may be eligible to engage in uncleared swaps with certain non-U.S. counterparties without complying with the requirement to post initial margin, and without complying with the requirement to hold initial margin collected by the CSE with one or more custodians that are not the CSE, its counterparty, or an affiliate of the CSE or its counterparty, pursuant to section 23.157(b) of the Final Margin Rule,[254] but only if certain conditions are satisfied.[255] In order to rely on this provision, an FCS or foreign branch of a U.S. CSE will need to satisfy all of the conditions of the rule, including that (1) inherent limitations in the legal or operational infrastructure of the foreign jurisdiction make it impracticable for the CSE and its counterparty to post any form of eligible initial margin collateral for the uncleared swap pursuant to custodial arrangements that comply with the Commission's margin rules; (2) foreign regulatory restrictions require the CSE to transact in uncleared swaps with the counterparty through an establishment within the foreign jurisdiction and do not permit the posting of collateral for the swap in compliance with the custodial arrangements of section 23.157 of the Final Margin Rule in the United States or a jurisdiction for which the Commission has issued a comparability determination under the Final Rule with respect to section 23.157; (3) the CSE's counterparty is not a U.S. person and is not a CSE, and the counterparty's obligations under the uncleared swap are not guaranteed by a U.S. person;[256] (4) the CSE collects initial margin in cash on a gross basis, in cash, and posts and collects variation margin in cash, for the uncleared swap in accordance with the Final Margin Rule;[257] (5) for each broad risk category, as set out in section 23.154(b)(2)(v) of the Final Margin Rule, the total outstanding notional value of all uncleared swaps in that broad risk category, as to which the CSE is relying on section 23.160 (e), may not exceed 5 percent of the CSE's total outstanding notional value for all uncleared swaps in the same broad risk category; (6) the CSE has policies and procedures ensuring that it is in compliance with the requirements of this provision; and (7) the CSE maintains books and records properly documenting that all of the requirements of this provision are satisfied.[258]

3. Information Collection—Non-Netting Jurisdictions

Section 23.160(d) of the Final Rule includes a special provision for non-netting jurisdictions. This provision allows CSEs that cannot conclude after sufficient legal review with a well-founded basis that the netting agreement with a counterparty in a foreign jurisdiction meets the definition of an "eligible master netting agreement" set forth in the Final Margin Rule to nevertheless net uncleared swaps in determining the amount of margin that they post, provided that certain conditions are met. In order to avail itself of this special provision, the CSE must treat the uncleared swaps covered by the agreement on a gross basis in determining the amount of initial and variation margin that it must collect, but may net those uncleared swaps in determining the amount of initial and variation margin it must post to the counterparty, in accordance with the netting provisions of the Final Margin Rule. A CSE that enters into uncleared swaps in "non-netting" jurisdictions in reliance on this provision must have policies and procedures ensuring that it is in compliance with the special provision's requirements, and maintain books and records properly documenting that all of the requirements of this exception are satisfied.[259]

As noted above, the Commission is publishing a separate notice in the **Federal Register** concurrently with this final rule requesting comments on the burden estimates of both new information collections to amend OMB Control Number 3038–0111.

C. Cost-Benefit Considerations

1. Introduction

As discussed above, the Final Rule addresses the cross-border application of the Commission's margin requirements. Specifically, the Final Rule establishes certain key definitions ("U.S. person," "guarantee," and "Foreign Consolidated Subsidiary"); allows CSEs to rely on substituted compliance where appropriate; provides a limited Exclusion for certain transactions between non-U.S. persons; includes special provisions for "non-segregation jurisdictions"[260] and "non-netting jurisdictions;"[261] and establishes a framework for making comparability determinations.

In the sections that follow, the Commission discusses the costs and benefits associated with the Final Rule on CSEs and affected market participants and any reasonable alternatives.[262] Given a general lack of useful data regarding the costs and benefits of the Final Rule, from commenters or otherwise, and the considerable uncertainty given that foreign jurisdictions are at different stages in implementing their regimes, the costs and benefits of the Final Rule are generally considered in qualitative terms.

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[254] As explained further in note 174, because CSEs that rely on section 23.160(e) are not required to hold collateral in accordance with section 23.157(b) for initial margin that they collect, they also would not be required to comply with 23.157(c) with respect to initial margin that they collect.

[255] CSEs that are not FCSs or foreign branches of U.S. CSEs and are not otherwise excluded from the Final Margin Rule could not engage in swap transactions in these jurisdictions.

[256] As noted above, the Commission would expect the CSE's counterparty to be a local financial end user that is required to comply with the foreign jurisdiction's laws and that is prevented by regulatory restrictions in the foreign jurisdiction from posting collateral for the uncleared swap in the United States or a jurisdiction for which the Commission has issued a comparability determination under the Final Rule, even using an affiliate.

[257] As noted above, the CSE must collect initial margin in accordance with § 23.152(a) on a gross basis, in the form of cash pursuant to § 23.156(a)(1)(i) and post and collect variation margin in accordance with section 23.153(a) in the form of cash pursuant to section 23.156(a)(1)(i). *See* § 23.160(e)(4) of the Final Rule.

[258] *See* 17 CFR 23.160(e).

[259] *See* § 23.160(d) of the Final Rule.

[260] As used in this release, a "non-segregation jurisdiction" is a jurisdiction where inherent limitations in the legal or operational infrastructure of the foreign jurisdiction make it impracticable for the CSE and its counterparty to post initial margin pursuant to custodial arrangements that comply with the Final Margin Rule, as further described in section II.B.4.b.

[261] As used in this release, a "non-netting jurisdiction" is a jurisdiction in which a CSE cannot conclude, with a well-founded basis, that the netting agreement with a counterparty in that foreign jurisdiction meets the definition of an "eligible master netting agreement" set forth in the Final Margin Rule, as described in section II.B.5.b.

[262] As stated above, the Commission estimates that the Final Rule will affect approximately 54 registered swap dealers and major swap participants. The Commission further estimates that it will receive requests for a comparability determination from 17 jurisdictions.

The baseline against which the costs and benefits of this Final Rule are being compared is the status quo, *i.e.*, the swap market as it exists as if the Final Margin Rule is in full effect.[263] The cost-benefit considerations section of the Final Margin Rule made clear that CEA section 4s(e), read together with CEA section 2(i), applies the margin rules to a CSE's swap activities outside the United States, regardless of the domicile of the CSE or its counterparties.[264] Accordingly, in considering the costs and benefits of this Final Rule, the Commission focused on the impact of permitting substituted compliance and certain exclusions from the Final Margin Rule.[265]

The Commission is mindful of the potentially significant tradeoffs inherent in the Final Rule. As discussed above, given the highly-interconnected, global swap market, overseas risk can quickly manifest in the United States. The cross-border application of the Commission's margin rules is therefore important to protecting the U.S. financial system from this risk. At the same time, competitive distortions and market inefficiencies can result—and the benefits of the Commission's cross-border framework could be reduced—if due consideration is not given to comity principles. The Commission considered these tradeoffs and worked to carefully tailor the cross-border approach in the Final Rule to address comity considerations, mitigate the potential for undue market distortions, and promote global coordination without compromising the safety and soundness of CSEs.

Although commenters generally did not comment on the cost-benefit discussion in the proposed rule itself,[266] they did discuss various costs and benefits associated with the Commission's proposal. These comments are further addressed in the context of the Commission's cost-benefit considerations below.

2. Key Definitions

The extent to which the Commission's margin requirements apply—and the availability of substituted compliance and the Exclusion—depends on whether the relevant swap involves a U.S. person, a guarantee by a U.S. person, or a Foreign Consolidated subsidiary. As discussed above, the Final Rule adopts definitions of "U.S. person," "guarantee," and "Foreign Consolidated Subsidiary" solely for purposes of the margin rules. The costs and benefits associated with these definitions, and any reasonable alternatives, are discussed below. In general, the Commission believes that the clear, objective nature of these terms, along with the ability to rely on related written counterparty representations, will promote legal certainty and help minimize the costs associated with applying the Final Rule.

a. U.S. Person

As discussed in section II.A.1., the term "U.S. person" identifies individuals or entities whose activities have a significant nexus to the U.S. market by virtue of being organized or domiciled in the United States or the depth of their connection to the U.S. market, even if they are domiciled or organized outside the United States. The Final Rule generally follows a traditional, territorial approach to defining a U.S. person, and the Commission believes that this definition provides an objective and clear basis for determining those individuals or entities that should be identified as a U.S. person. Accordingly, the Commission does not believe market participants will face significant costs in assessing their own U.S. person status, particularly given the broad similarities between how the Final Rule defines "U.S. person" and how the term is defined in the SEC's rules. The Final Rule also makes clear that market participants may reasonably rely on counterparty representations regarding their U.S. person status absent indications to the contrary, which should further reduce any operational costs associated with assessing U.S. person status.

The Final Rule addresses many of the concerns commenters raised regarding the costs and benefits of its proposed approach to defining "U.S. person." As discussed above, the Final Rule does not include a U.S. majority-owned prong, which commenters argued would create operational burdens for assessing U.S. person status and result in regulatory overlap. Nor does it include a catchall provision, limiting the Rule's application to a list of enumerated persons.

The Commission recognizes that, as commenters pointed out, legal entities that fall within the unlimited U.S. responsibility prong may also be subject to regulation under a foreign margin regime, creating the potential for overlapping requirements. However, as discussed in section II.A.1.c., the Commission believes that the unique nature of the relationship between the legal entity and its U.S. person owner(s) facilitates the legal entity's swap business and creates a significant nexus between the legal entity and U.S. financial markets. While the Commission understands that limiting application of the prong to circumstances where the U.S. persons are majority owners of the legal entity could mitigate the potential for overlapping requirements, as the Commission explained above, the U.S. person owner(s) responsibility for the legal entity's obligations and liabilities is unlimited regardless of the amount of equity it owns in the legal entity. Furthermore, excluding such legal entities from the scope of the U.S. person definition could create incentives for U.S. persons to establish such legal entities and use them as a pass-through for their own swap activities solely for purposes of avoiding the margin requirements of the Dodd-Frank Act.

The Commission also recognizes that further narrowing the differences between the Final Rule's U.S. person definition and either the SEC's definition or the "U.S. person" interpretation in the Guidance could provide certain benefits. Namely, market participants could enjoy reduced operational costs by relying on existing systems and U.S. person status determinations and not having to support multiple meanings of the term "U.S. person." As discussed above, however, the Commission believes that the Final Rule's "U.S. person" definition is appropriate in the context of the margin rule. The Commission further believes that the objective and clear definition set out in the Final Rule will result in a lower overall cost for assessing U.S. person status going forward.

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[263] 81 FR 636 (Jan. 6, 2016) (codified at 17 CFR parts 23 and 140). As the Commission noted above, the Final Margin Rule included substantial modifications from the Proposed Margin Rule that further aligned the Commission's margin requirements with International Standards and, as a result, the potential for conflict with foreign margin requirements should be reduced. *See supra* note 29.

[264] *See* Final Margin Rule, 81 FR at 682. The Commission notes that to the extent there may be differences in the particulars of costs to foreign CSEs or financial end users, the Commission had not been provided with information that would permit the evaluation of any such differences.

[265] As noted in the Final Margin Rule, as foreign jurisdictions adopt their own margin rules, the existence of those rules may affect the costs and benefits of the Final Margin Rule. *See* Final Margin Rule, 81 FR at 682, n.359. For example, if certain transactions become subject to duplicative foreign regulation, that could increase costs, or reduce benefits, of compliance with the Final Margin Rule. Because of the still developing state of foreign law in this area and the absence of specific information on the subject in the record, it was not possible to evaluate such effects in detail in the Final Margin Rule release. In this rulemaking, the same limitations do not permit a detailed evaluation of such possible effects in the present proceeding and therefore, the Commission discusses these possible effects in general qualitative terms.

[266] *But see* IATP at 7 (Commission's assumptions about costs and benefits of the Proposal were accurate considering the current "stage of foreign jurisdiction rulemaking" relating to margin requirements); ABA/ABASA at 3 (Proposal did not adequately take into account the costs of the proposed approach); ISDA at 5 (Proposal did not give "due weight" to its impact on price discovery, risk management, increased compliance and liquidity costs, market fragmentation, or comity).

b. Guarantees

As explained in section II.A.2.c., under the Final Rule, the term "guarantee" is defined to include arrangements, pursuant to which one party to an uncleared swap has rights of recourse against a guarantor, with respect to its counterparty's obligations under the uncleared swap. The Final Rule further defines what it means for a party to have rights of recourse, and further encompasses any arrangement pursuant to which the guarantor itself has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from any other guarantor with respect to the counterparty's obligations under the uncleared swap.[267] As further explained in section II.B.2.b.i, "U.S. Guaranteed CSEs"[268] are eligible for substituted compliance, but are ineligible for the Exclusion and the special provision for non-segregation jurisdictions, to the same extent as U.S. CSEs (except that foreign branches of U.S. CSEs may be eligible for the special provision for non-segregation jurisdictions, as described in section II.B.4.b.).[269]

As commenters noted, limiting the scope of guarantees in the context of the margin requirements to arrangements that include a right of recourse offers the benefit of legal certainty, making the definition relatively easy to apply and helping keep down the cost of determining whether a transaction involves a U.S. Guaranteed CSE. Allowing market participants to rely on counterparty representations with regard to the presence of guarantees should also help market participants keep costs down. Although the Final Rule adopts a definition of guarantee that is different than the existing interpretation in the Guidance, which may result in market participants incurring additional costs to update their current systems, those operational challenges may be mitigated given that the definition is straight-forward and similar to that previously adopted by the SEC. In addition, while the inclusion of language that addresses indirect guarantees may result in some added operational challenges or assessment costs, the Commission believes the provision is necessary to avoid creating incentives for market participants to structure guarantee arrangements in order to avoid application of the Dodd-Frank margin requirements. The Final Rule also achieves substantial benefits in harmonizing with the guarantee definitions adopted by the Prudential Regulators.

The Commission recognizes that, as discussed in section II.B.2 and as pointed out by commenters, the definition of "guarantee" adopted in the Final Rule does not encompass all forms of financial arrangements or support that may result in a direct transfer of risk to the U.S. financial markets, such as keepwells and liquidity puts. Nor would it include instances in which a parent and a subsidiary entity are closely related and the parent faces strong reputational incentives to support the subsidiary. As discussed above, however, the Commission believes that, in the context of the Final Rule, non-U.S. CSEs benefitting from such other forms of U.S. financial support will likely meet the definition of an FCS and thus be adequately covered by the Commission's margin requirements. Given the further inclusion of language that addresses indirect guarantees and the mandate to coordinate with the Prudential Regulators, the Commission believes that a more limited "guarantee" definition is appropriate in the context of the cross-border application of the margin requirements and will not undermine the safety and soundness of CSEs or the U.S. financial markets.

c. Foreign Consolidated Subsidiary

As explained in section II.B.3, the Final Rule uses the term "Foreign Consolidated Subsidiary" to identify non-U.S. CSEs whose uncleared swaps raise substantial supervisory concern in the United States by virtue of their relationship with their U.S. ultimate parent entity and because their financial position, operating results, and statement of cash flows have a direct impact on the financial position, risk profile and market value of their U.S. ultimate parent entity. FCSs are not eligible for the Exclusion but are otherwise treated the same as any other non-U.S. CSEs whose obligations under the relevant swap are not guaranteed by a U.S. person.

As commenters noted, the Final Rule's use of a consolidation test that relies on U.S. GAAP to define "Foreign Consolidated Subsidiary" promotes legal certainty by articulating a clear, familiar, bright-line test. The Commission also took into account that the consolidation test is already being used in preparing financial statements, and as a result, should not result in more costs to market participants.[270] The Commission further believes that allowing market participants to rely on counterparty representations with respect to their status as an FCS will reduce any operational costs that may be associated with determining whether a counterparty is an FCS, especially given that the Prudential Regulators adopted a similar definition for purposes of their margin rules.

3. Application

Section II.B describes the application of the Commission's margin rules to cross-border uncleared swaps between CSEs and their counterparties, including the availability of substituted compliance and the Exclusion. The Final Rule also includes special provisions for non-segregation jurisdictions and non-netting jurisdictions.

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[267] *See* 17 CFR 23.160(a)(2). As noted above, under the Final Rule, the term "guarantee" applies whenever a party to the swap has a legally enforceable right of recourse against a guarantor with respect to its counterparty's obligations under the swap, regardless of whether such right of recourse is conditioned upon the counterparty's insolvency or failure to meet its obligations under the relevant swap, or whether the counterparty seeking to enforce the guarantee is required to make a demand for payment or performance from its counterparty before proceeding against the U.S. guarantor.

[268] This release uses the term "U.S. Guaranteed CSE" for convenience only. Whether a non-U.S. CSE falls within the meaning of the term "U.S. Guaranteed CSE" varies on a swap-by-swap basis, such that a non-U.S. CSE may be considered a U.S. Guaranteed CSE for one swap and not another, depending on whether the non-U.S. CSE's obligations under such swap are guaranteed by a U.S. person.

[269] As further discussed above, the Final Rule generally treats uncleared swaps of non-U.S. CSEs, where the non-U.S. CSE's obligations under the uncleared swap are guaranteed by a U.S. person, the same as uncleared swaps of a U.S. CSE. In addition, guarantees may affect whether full or partial substituted compliance is available. Further, under the Final Rule, the Exclusion is not available if either party's obligations under the swap are guaranteed by a U.S. person. In addition, in order for an FCS or foreign branch of a U.S. CSE to engage in uncleared swaps in non-segregation jurisdictions as provided in section 23.160(e) of the Final Rule, one of the conditions that must be satisfied is that the counterparty to the swap cannot be a U.S. person and its obligations under the uncleared swap cannot be guaranteed by a U.S. person.

[270] As discussed in greater detail in section II.A.3, although commenters suggested various modifications to the FCS definition, such as relying on IFRS instead of U.S. GAAP or including non-U.S. CSEs whose U.S. parent meets standards for consolidation, but is not required to prepare consolidated financial statements under U.S. GAAP, the Commission does not believe such modifications would offer substantial benefits.

a. Substituted Compliance

As described in section II.B.2.b and as set out in Table A, the extent to which substituted compliance is available under the Final Rule depends on whether the relevant swap involves a U.S. person, a guarantee by a U.S. person, or an FCS. U.S. CSEs and U.S. Guaranteed CSEs are eligible for substituted compliance only with respect to the requirement to post (but not the requirement to collect) initial margin, provided that their counterparty is a non-U.S. person (including a non-U.S. CSE) whose obligations under the swap are not guaranteed by a U.S. person.[271] On the other hand, non-U.S. CSEs whose obligations under the relevant swap are not guaranteed by a U.S. person are broadly eligible for substituted compliance (including for their swaps with U.S. persons that are not CSEs); however, only partial substituted compliance would be available for such non-U.S. CSE's swaps with U.S. CSEs or U.S. Guaranteed CSEs.[272]

The Commission recognizes that the decision to offer any substituted compliance in the first instance carries certain trade-offs. Given the global and highly-interconnected nature of the swap market, where risk does not respect national borders, market participants are likely to be subject to the regulatory interest of more than one jurisdiction. As commenters have pointed out, allowing compliance with foreign margin requirements as an alternative to domestic requirements can therefore reduce the application of duplicative or conflicting requirements, resulting in lower compliance costs and facilitating a more level playing field. Substituted compliance also helps preserve the benefits of an integrated, global swap market by fostering and advancing efforts among U.S. and foreign regulators to collaborate in establishing robust regulatory standards, as envisioned by the BCBS–IOSCO framework. If not properly implemented, however, the Commission's margin regime could lose some of its effectiveness. Accordingly, as commenters have recognized, the ultimate costs and benefits of substituted compliance are affected by the standard under which it is granted and the extent to which it is applied. The Commission was mindful of this dynamic in structuring a substituted compliance regime for the margin requirements and believes the Final Rule strikes an appropriate balance, enhancing market efficiency and fostering global coordination of margin requirements without compromising the safety and soundness of CSEs and the U.S. financial system.

The Commission also understands that, as commenters pointed out, by not offering substituted compliance equally to all CSEs, the Final Rule may lead to certain competitive disparities between CSEs and between CSEs and non-CFTC registered dealers. For example, to the extent that non-U.S. CSEs whose obligations are not guaranteed by a U.S. person can rely on substituted compliance that is not available to U.S. CSEs or U.S. Guaranteed CSEs, they may enjoy certain cost advantages (*e.g.,* avoiding the costs of potentially duplicative or inconsistent regulation, which could allow them to develop one enterprise-wide set of compliance and operational infrastructures). The non-U.S. CSEs may then be able to pass on these cost savings to their counterparties in the form of better pricing or some other benefit. U.S. CSEs and U.S. Guaranteed CSEs, on the other hand, could, depending on the extent to which foreign margin requirements apply, be subject to both U.S. and foreign margin requirements, and therefore be at a competitive disadvantage. Counterparties may also be incentivized to transact with CSEs that are offered substituted compliance in order to avoid being subject to duplicative or conflicting margin requirements, which could lead to increased market inefficiencies.[273]

Nevertheless, the Commission does not believe it is appropriate to make substituted compliance broadly available to all CSEs. As discussed above, the Commission has a strong supervisory interest in the uncleared swaps activity of all CSEs, including non-U.S. CSEs, by virtue of their registration with the Commission. Furthermore, U.S. CSEs and U.S. Guaranteed CSEs are particularly key swap market participants and their safety and soundness is critical to a well-functioning U.S. swap market and the stability of the U.S. financial system. Accordingly, in light of the Commission's supervisory interest in the activities of U.S. persons and its statutory obligation to ensure the safety and soundness of CSEs and the U.S. financial markets in the context of uncleared swaps, the Commission believes that substituted compliance is generally not appropriate for U.S. CSEs and U.S. Guaranteed CSEs given their importance to the U.S. financial markets.[274] With respect to other non-U.S. CSEs (including FCSs) that are not subject to a U.S. guarantee, however, the Commission believes that, in the interest of international comity, making substituted compliance broadly available is appropriate.

As further discussed in section II.B.2.b.i., the Commission determined that partial substituted compliance is appropriate for U.S. CSEs and U.S. Guaranteed CSEs in the limited case of posting (but not collecting) initial margin. Contrary to commenters' assertions, the Commission does not believe that partial substituted compliance is impractical or will hinder the development of a standardized model for initial margin. As discussed above, the Commission does not expect a CSE to have two netting sets as a result of partial substituted compliance, given that the U.S. CSE is always required to collect initial margin according to the Commission's margin requirements while it has the option to post according to the Commission's or its counterparty's foreign margin requirements. If substituted compliance is elected, the U.S. CSE will be deemed to satisfy the Commission's margin requirements by meeting the foreign jurisdiction's margin requirements, which will result in one netting set. Furthermore, the Commission believes that permitting partial substituted compliance allows market participants to avoid some costs associated with complying with duplicative or conflicting requirements.

The Commission acknowledges that foreign branches may, for the reasons raised by commenters and discussed above, be at a competitive disadvantage compared to non-U.S. CSEs, with whom they may compete in the countries in which they are established, by virtue of not being eligible for substituted compliance. However, as discussed in section II.B.2.b.i., the swap activities of a foreign branch of a U.S. CSE are legally indistinguishable from the swap activities of the U.S. CSE. Permitting more favorable treatment to foreign branches of U.S. CSEs than the principal U.S. entity could create an easy way for U.S. CSEs to circumvent the Commission's margin requirements, which could undermine the safety and soundness of the U.S. CSE and the U.S. financial system.[275]

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[271] Similarly, a non-U.S. CSE (including an FCS) is eligible for substituted compliance with respect to the requirement to collect initial margin if its counterparty is a U.S. CSE or a U.S. Guaranteed CSE.

[272] A subset of these non-U.S. CSEs may qualify for the Exclusion, as described in section II.B.3.b above.

[273] The Commission recognizes that its framework may impose certain initial operational costs, as CSEs will be required to determine the status of their counterparties in order to determine the extent to which substituted compliance is available. The Commission however believes the ability to obtain and rely on counterparty representations should help mitigate such costs.

[274] As discussed in section II.B.2.b.i above, because uncleared swaps of U.S. Guaranteed CSEs are identical in relevant respects to a swap entered directly by a U.S. person, the Final Rule treats these uncleared swaps the same as uncleared swaps of U.S. CSEs.

b. Exclusion

Under the Final Rule, the Commission excludes from its margin requirements uncleared swaps entered into by a non-U.S. CSE with a non-U.S. counterparty (including a non-U.S. CSE), provided that neither counterparty's obligations under the relevant swap are guaranteed by a U.S. person and neither counterparty is an FCS nor a U.S. branch of a non-U.S. CSE. As discussed in section II.B.3.b above, the Commission believes that it is appropriate to tailor the application of margin requirements in the cross-border context, consistent with section 4s(e) of the CEA and comity principles, so as to exclude this narrow class of uncleared swaps involving a non-U.S. CSE and a non-U.S. counterparty.

The Commission believes that such non-U.S. CSEs may benefit from the Exclusion because it allows them to avoid duplicative or conflicting regulations where a transaction is subject to more than one uncleared swap margin regime. On the other hand, to the extent the Exclusion allows a non-U.S. CSE to rely on foreign margin requirements that are not comparable to the Commission's, the Exclusion could result in a less rigorous margin regime for such CSE or, in the extreme, the absence of any margin requirements. This would not only increase the risk posed by that CSE's swaps activities, but could create competitive disparities between non-U.S. CSEs relying on the Exclusion and other CSEs that are not eligible for the Exclusion. That is, the Exclusion could allow these non-U.S. CSEs to offer better pricing or other terms to their non-U.S. clients and put them in a better position (than CSEs ineligible for the Exclusion) to compete with non-CFTC registered dealers in the relevant foreign jurisdiction for foreign clients. The degree of competitive disparity will depend on the degree of disparity between the Commission's margin framework and that of the relevant foreign jurisdiction.

The Commission does not generally expect that the Exclusion will result in a significant diminution in the safety and soundness of the non-U.S. CSE, as discussed in section II.B.3.b above. This is based on several considerations. First, the Commission understands that most swaps are currently transacted in jurisdictions that have agreed to adhere to the BCBS–IOSCO framework, which covers financial entities.[276] Accordingly, the Commission anticipates that many excluded swaps will nevertheless be subject to margin requirements in a jurisdiction that adheres to the BCBS–IOSCO framework. Second, the potential adverse effect on a non-U.S. CSE would be mitigated by the Commission's capital requirements which, as proposed, would impose a capital charge for uncollateralized exposures.[277]

Third, a non-U.S. CSE that can avail itself of the Exclusion will still be subject to the Commission's margin rules with respect to all uncleared swaps not meeting the criteria for the Exclusion, albeit with the possibility of substituted compliance. That the non-U.S. CSE will be subject to U.S. or comparable margin requirements when entering into a swap with U.S. counterparties reduces the possibility of a cascading event affecting U.S. counterparties and the U.S. financial markets more broadly as a result of a default by the non-U.S. CSE.

The unavailability of the Exclusion to FCSs could disadvantage them relative to other non-U.S. CSEs that are eligible for the Exclusion or non-CFTC registered dealers within a foreign jurisdiction. As commenters noted, non-U.S. CSEs that rely on the Exclusion or non-CFTC registered dealers could realize a cost advantage over FCSs and thus have the potential to offer better pricing terms to foreign clients. The competitive disparity between non-U.S. CSEs that rely on the Exclusion and FCSs, however, may be somewhat mitigated to the extent that the relevant foreign jurisdiction implements the BCBS–IOSCO framework.[278]

As noted above in section II.B.3.a., some commenters suggested that treating U.S. branches of non-U.S. CSEs differently from the rest of the CSE with respect to eligibility for the Exclusion could present operational challenges, requiring non-U.S. CSEs to document transactions with the U.S. branch under a separate ISDA Master Agreement. However, as explained in section II.B.3.b., in most cases the Commission does not believe a separate credit support agreement will be necessary;[279] furthermore, in those cases where it is required, the Commission nevertheless believes that extending the Exclusion to U.S. branches of non-U.S. CSEs would not be appropriate for the reasons discussed in section II.B.3.b above.[280] In addition, allowing U.S. branches to rely on the Exclusion would enable them to offer more competitive terms to non-U.S. clients than U.S. CSEs, thereby gaining an advantage when dealing with non-U.S. clients relative to other CSEs operating within the United States (*i.e.*, U.S. CSEs). On the other hand, for the same reason, the Final Rule could put non-U.S. CSEs that conduct swaps business through their U.S. branches at a disadvantage relative either to non-U.S. CSEs that are eligible for the Exclusion or non-CFTC registered dealers that conduct swaps business overseas. The Commission recognizes that while substituted compliance will be broadly available to such U.S. branches of non-U.S. CSEs, more compliance costs could be incurred by these entities than if the Exclusion were made available if a foreign jurisdiction's margin requirements are not comparable.[281]

In order to effectuate the Commission's treatment of inter-affiliate swaps under the Final Margin Rule, the Exclusion is not available if the market-facing transaction of the non-U.S. CSE (that is otherwise eligible for the Exclusion) is not subject to comparable initial margin collection requirements in the home jurisdiction and any of the risk associated with the uncleared swap is transferred, directly or indirectly, through inter-affiliate transactions, to a U.S. CSE. As a consequence, the affected non-U.S. CSEs may be placed at a cost disadvantage relative to non-U.S. CSEs that can rely on the Exclusion as well as non-CFTC registered dealers operating in the foreign jurisdiction that are not subject to similarly rigorous initial margin collection requirements. The Commission, however, believes that this limitation is necessary to ensure that the Exclusion does not facilitate the transfer of risk to a U.S. CSE through the use of inter-affiliate transactions that, per the Final Margin Rule, are generally not subject to the collection of initial margin.

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[275] The Commission notes that the potential competitive disparities could be minimized to the degree foreign margin requirements are harmonized or otherwise comparable to the Commission's.

[276] Element 2 of BCBS–IOSCO framework states: "All covered entities (*i.e.* financial firms and systemically important non-financial entities) that engage in non-centrally cleared derivatives must exchange initial and variation margin as appropriate to the counterparty risks posed by such transactions."

[277] *See* Proposed Capital Rule, 76 FR 27802.

[278] As discussed above, a commenter's suggestion to exclude transactions between an FCS and another non-guaranteed non-U.S. person up to an aggregate 5 percent notional trading limit would be difficult to monitor and could create incentives to "cherry-pick" and exclude uncleared swaps presenting the highest margin requirement, which could thereby introduce undue risk into the system.

[279] *See supra* note 158.

[280] The Prudential Regulators' Final Margin Rule does not grant an exclusion for the uncleared swaps of such U.S. branches on the basis that U.S. branches of foreign banks clearly operate within the United States and could pose risk to the U.S. financial system, and the Commission believes that harmonization with the Prudential Regulators' Final Margin Rule is appropriate. For further discussion of the reasons that the Exclusion does not extend to U.S. branches of non-U.S. CSEs, *see* section II.B.3.b above.

[281] As noted above, U.S. branches of foreign banks (as "foreign bank" is defined in section __.2 of the Prudential Regulators' Final Margin Rule (12 CFR part 237)) must comply with the Prudential Regulators' margin rules, as these U.S. branches have a Prudential Regulator, as defined in 1(a)(39) of the CEA.

c. Non-Segregation Jurisdictions and Non-Netting Jurisdictions

The Final Rule includes a special provision for non-segregation jurisdictions, where custodial arrangements that comply with the Commission's requirements set out in Commission Regulation 23.157[282] are impracticable due to the legal or operational infrastructure of the foreign jurisdiction.[283] Specifically, an FCS or a foreign branch of a U.S. CSE may, in certain circumstances, be excepted from the requirement to post initial margin for the uncleared swap in compliance with the custodial requirements of the Final Margin Rule in certain foreign jurisdictions where inherent limitations in the legal or operational infrastructure of the jurisdiction make it impracticable for the CSE and its counterparty to comply with that requirement, subject to certain conditions.

The Commission understands from commenters that inherent legal and operational constraints in certain jurisdictions could make compliance with the custodial requirements of the Final Margin Rule impracticable. Accordingly, absent the exception, FCSs and foreign branches of U.S. CSEs would be unable to conduct uncleared swap business with clients based in such jurisdictions, contributing to further market inefficiencies. The Commission further agrees with commenters that an exception from the requirement to post (but not from the requirement to collect) initial margin when transacting with clients in non-segregation jurisdictions will accomplish the goal of ensuring a CSE's safety and soundness but with less disruption to existing business relationships than the exchange of initial and variation margin would impose.

After careful consideration, the Commission is adding a special provision so that FCSs and foreign branches of U.S. CSEs will not be foreclosed from engaging in uncleared swaps business in non-segregation jurisdictions, with appropriate conditions, including a 5 percent limitation, as discussed in section II.B.4.b above, to avoid compromising the safety and soundness of CSEs. The Commission does not believe a blanket de minimis exception from the Commission's margin requirements, as suggested by commenters, is appropriate. Rather, the Commission believes that carefully tailored relief from the Final Margin Rule's requirement to post initial margin and the custodial arrangement requirements that pertain to initial margin collected by a CSE will accomplish the goal of allowing FCSs and foreign branches of U.S. CSEs to carry on their swaps business in non-segregation jurisdictions without creating the risks that would attend wholesale exemption from margin requirements in these jurisdictions. In addition, in light of the importance of FCSs and foreign branches of U.S. CSEs to the U.S. financial system, the special provision includes certain conditions that are designed to appropriately limit the swap activities conducted by these CSEs in these jurisdictions in order to help ensure their safety and soundness. Although these conditions may place affected entities at a relative cost disadvantage when compared to non-U.S. CSEs that can rely on the Exclusion and non-CFTC registered dealers engaged in swaps activity in non-segregation jurisdictions, and may limit the overall swap dealing activity of affected entities in these jurisdictions, the Commission believes that the special provision provides a substantial benefit to the affected entities by allowing them to conduct a limited level of swaps business in non-segregation jurisdictions where they would otherwise be foreclosed. While permitting FCSs and foreign branches of U.S. CSEs to carry on their swaps business in non-segregation jurisdictions in accordance with this special provision is not without some risk, in that the initial margin collected by FCSs and foreign branches of U.S. CSEs in reliance on this provision is not subject to the custodial arrangement requirements of the Final Margin Rule, the Commission believes that the conditions to using this provision (including the 5 percent limit in each of four broad risk categories set forth in § 23.154(b)(2)(v)) should be sufficient to prevent undue risk arising from uncleared swaps by FCSs and foreign branches of U.S. CSEs relying on this provision.

The Final Rule also includes a special provision for "non-netting" jurisdictions.[284] In order to avail itself of this provision, the CSE must treat the uncleared swaps covered by the netting agreement on a gross basis in determining the amount of initial and variation margin that it must collect, but may net those uncleared swaps in determining the amount of initial and variation margin it must post to the counterparty, in accordance with the netting provisions of the Final Margin Rule. The Commission agrees that, as suggested by commenters, without enforceable netting and collateral arrangements, there is a risk that a CSE may not be able to effectively foreclose on the margin in the event of a counterparty default, and a risk that the administrator of an insolvent counterparty will "cherry-pick" from posted collateral to be returned in the event of insolvency, which could result in an increase in the risk in posting collateral. As with the provision for non-segregation jurisdictions, this provision is carefully tailored to allow CSEs to conduct swap transactions in "non-netting" jurisdictions without abandoning the key protections behind the netting requirement under the Final Margin Rule.[285] If the Commission were not to adopt this special provision, then a CSE would have to collect and post margin on a gross basis, which would result in greater costs to the CSE and result in additional credit risk, and put them at a competitive disadvantage. It is possible that this would lead to CSEs being effectively precluded from doing business in these jurisdictions.

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[282] *See* 17 CFR 23.157.

[283] As used in this release, a "non-segregation jurisdiction" is a jurisdiction where inherent limitations in the legal or operational infrastructure of the foreign jurisdiction make it impracticable for the CSE and its counterparty to post initial margin pursuant to custodial arrangements that comply with the Final Margin Rule, as further described in section II.B.4.b.

[284] As used in this release, a "non-netting jurisdiction" is a jurisdiction in which a CSE cannot conclude, with a well-founded basis, that the netting agreement with a counterparty in that foreign jurisdiction meets the definition of an "eligible master netting agreement" set forth in the Final Margin Rule, as described in section II.B.5.b.

[285] The Commission considered a broader provision, including, as requested by commenters, excluding these transactions from its margin rule. However, as netting provisions are critical to the overall goal of margin requirements and the Commission is not requiring CSEs to post margin on a gross basis, the Commission believes that the regulatory gap that a broader provision would create would be inconsistent with the Commission's mandate to protect the safety and soundness of CSEs.

4. Comparability Determinations

As noted in section II.C above, any CSE eligible for substituted compliance may make a request for a comparability determination. Currently, there are approximately 106 swap entities provisionally registered with the Commission. The Commission further estimates that of the 106 swap entities that are registered, approximately 54 are subject to the Commission's margin rules, as they are not supervised by a Prudential Regulator. However, the Commission notes that any foreign regulatory agency that has direct supervisory authority to administer the foreign regulatory framework for margin of uncleared swaps in the requested foreign jurisdiction may apply for a comparability determination. Further, once a comparability determination is made for a jurisdiction, it will apply for all entities or transactions in that jurisdiction to the extent provided in the determination, as approved by the Commission.

Although there is uncertainty regarding the number of requests for comparability determinations that will be made under the Final Rule, the Commission estimates that it will receive applications for comparability determinations from 17 jurisdictions representing 61 separate registrants, and that each request will impose an average of 10 burden hours per registrant.

Based on the above, the Commission estimates that the preparation and filing of submission requests for comparability determinations should take no more than 170 hours annually in the aggregate (17 registrants × 10 hours). The Commission further estimates that the total aggregate cost of preparing such submission requests will be $64,600, based on an estimated cost of $380 per hour for an in-house attorney.[286]

As summarized in section II.C.2, several commenters complained that the costs and burdens to market participants associated with the Commission's proposed framework and standard for making comparability determinations would be minimized if the Commission were to rely on the BCBS–IOSCO framework as the sole basis for its comparability analysis and take a "holistic" approach to determining comparability. As the Commission explained above, however, while the BCBS–IOSCO framework establishes minimum standards that are consistent with the objectives of the Commission's own margin requirements, consistency with International Standards is necessary but may not be sufficient to finding comparability.[287] Furthermore, allowing for a comparability determination to be made based on comparable outcomes and objectives notwithstanding differences in foreign jurisdictions' requirements ensures that substituted compliance is made available to the fullest extent possible. While the Commission recognizes that, to the extent that a foreign margin regime is not deemed comparable in all respects, CSEs eligible for substituted compliance may experience costs from being required to comply with more than one set of specified margin requirements, the Commission believes that this approach is preferable to an all-or-nothing approach, in which market participants may be forced to comply with both margin regimes in their entirety.

5. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

a. Protection of Market Participants and the Public

As described above, CEA section 4s(e)(2)(A) requires the Commission to develop rules designed to ensure the safety and soundness of CSEs and the U.S. financial system. On the one hand, full application of the Commission's margin requirements to all uncleared swaps of CSEs would help to ensure the safety and soundness of CSEs and the U.S. financial system by reducing counterparty credit risk and the threat of contagion. On the other hand, extending substituted compliance to certain cross-border swaps reduces the potential for conflicting or duplicative requirements, which would, in turn, reduce market distortions and promote global harmonization. In addition, where exceptions have been permitted (*i.e.*, under the Exclusion and the special provisions for non-segregation and non-netting jurisdictions), the Commission has limited their availability to strike a balance between international comity and the continuation of important business activity by qualifying CSEs, on the one hand, and limiting risk to CSEs and the U.S. financial system, on the other hand. While the Final Rule will allow CSEs to comply with foreign margin requirements as an alternative to the Commission's requirements in certain circumstances, such margin requirements must be comparable in outcome and objectives, and the Commission retains the authority to modify or condition the availability of substituted compliance as necessary. Furthermore, substituted compliance is available on a more limited basis for U.S. CSEs and U.S. Guaranteed CSEs. Additionally, while the Final Rule also excludes certain uncleared swap transactions involving non-U.S. CSEs whose obligations under the relevant swap are not subject to a U.S. guarantee from the Final Margin Rule and excepts qualifying CSEs from certain requirements in non-segregation jurisdictions and non-netting jurisdictions, the Exclusion and special provisions are narrowly tailored and include safeguards to protect market participants and the public. Overall, the Commission believes that the Final Rule takes proper account of significant, and sometimes competing, factors in order to effectively address the risk posed to the safety and soundness of CSEs while creating a workable cross-border framework that reduces the potential for undue market disruptions and promoting global harmonization, thereby benefiting market participants and the public.

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[286] Although different registrants may choose to staff preparation of the comparability determination request with different personnel, Commission staff estimates that, on average, an initial request could be prepared and submitted with 10 hours of an in-house attorney's time. To estimate the hourly cost of an in-house attorney's attorney time, Commission staff reviewed data in SIFMA's Report on *Management and Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and multiplied by a factor of 5.35 to account for firm size, employee benefits and overhead. Commission staff believes that use of a 5.35 multiplier here is appropriate because some persons may retain outside advisors to assist in making the determinations under the rules.

[287] *See supra* notes 232 and 233 and accompanying text. Also, as the Commission noted above, the Final Margin Rule included substantial modifications from the Proposed Margin Rule that further aligned the Commission's margin requirements with International Standards and, as a result, the potential for conflict with foreign margin requirements should be reduced. *See supra* note 29.

b. Efficiency, Competitiveness, and Financial Integrity

As discussed above, the Final Rule may have both a positive and negative effect on market efficiency and competitiveness. As an initial matter, substituted compliance and the Exclusion should improve resource allocation efficiency by allowing market participants to avoid potentially duplicative or conflicting requirements, reducing the aggregate cost to the market of dealing uncleared swaps. By granting this relief to some CSEs and not others, however, the Final Rule may afford such CSEs a cost advantage compared to other CSEs that may be required to comply with potentially duplicative or conflicting requirements. Non-U.S. counterparties may also be incentivized to transact with CSEs that are eligible for substituted compliance in order to avoid complying with more than one margin regime (or the Commission's margin regime alone), which could contribute to market inefficiencies. In addition, as the Exclusion is not provided to all CSEs, those that are not permitted to use the Exclusion may be at a competitive disadvantage when competing in foreign jurisdictions that do not have comparable margin rules. The Commission notes, however, that to the extent that non-U.S. CSEs are domiciled in jurisdictions with comparable requirements, this may mitigate possible regulatory arbitrage by these CSEs.

At the same time, however, the Commission understands that if it did not provide special accommodations for certain CSEs to enter into certain markets, such CSEs would be disadvantaged and even prohibited from engaging in swaps in these jurisdictions.

Furthermore, the Commission believes that the Final Rule ensures that substituted compliance and the Exclusion are extended in a tailored fashion that is consistent with protecting the integrity of the swaps market. Substituted compliance is only provided in the event that the relevant foreign jurisdiction has a comparable margin rule; if not, the CSE must comply with the Commission's margin rule. Even in instances where the Exclusion is available, the Commission notes that: (1) The Final Margin Rule will cover many of the swaps of the non-U.S. CSEs (eligible for the Exclusion) with other counterparties, namely, all U.S. counterparties; (2) the Exclusion is limited to a narrow set of swaps by non-U.S. CSEs; and (3) the excluded swaps may be covered by another foreign regulator's margin rule that is based on the BCBS–IOSCO framework.

c. Price Discovery

The Commission generally believes that substituted compliance, by reducing the potential for duplicative or conflicting regulations, could reduce impediments to transact uncleared swaps on a cross-border basis. This, in turn, may enhance liquidity as more market participants may be willing to enter into uncleared swaps, thereby possibly improving price discovery—and ultimately reducing market fragmentation. Alternatively, if substituted compliance or the Exclusion were not made available, CSEs could be incentivized to consider setting up their swap operations outside the Commission's jurisdiction, and as a result, increase the potential for market fragmentation. Additionally, exceptions for non-segregation and non-netting jurisdictions could increase price discovery in such jurisdictions by opening such markets to CSEs where, by virtue of the application of the Commission's margin requirements, such CSEs would otherwise be unable to deal uncleared swaps.

d. Sound Risk Management Practices

The Commission believes that the Final Rule is consistent with sound risk management practices. The Final Margin Rule promotes sound risk management practices, and this Final Rule requires U.S. CSEs and U.S. Guaranteed CSEs to apply that rule in its entirety for most cross-border transactions. To the extent substituted compliance is available in limited fashion to these entities and more broadly to non-U.S. CSEs, the foreign margin requirements must be comparable to the Commission's in outcome and objectives. That should ensure that margin's critical risk management function is unaffected. Although the Exclusion could potentially lead to weaker risk management for eligible non-U.S. CSEs to the extent that they are not otherwise subject to comparable foreign margin requirements, the Commission notes that in jurisdictions that are BCBS–IOSCO compliant, such CSEs will be subject to margin requirements that satisfy the minimum International Standards established by the BCBS–IOSCO framework.[288] Furthermore, while the Commission recognizes that a special provision in the Final Rule will excuse CSEs that are FCSs and foreign branches of U.S. CSEs from the requirement to post initial margin pursuant to custodial arrangements that comply with the Final Margin Rule, the Commission believes that the impact to risk management will be mitigated by the relatively small volume of such transactions, the conditions required to rely on this special provision, including a limit on the overall swaps using the special provision, and the continued applicability of other requirements, including margin with respect to other uncleared swaps of such FCSs and foreign branches and broader capital requirements.[289] The Commission similarly believes that the risk management implications of the special provision for non-netting jurisdictions will be limited. As explained above, CSEs will still be required to calculate and collect initial margin on a gross basis to ensure that the CSE can obtain the collateral posted with the counterparty in the event of counterparty default.

e. Other Public Interest Considerations

The Commission has not identified any additional public interest considerations related to the costs and benefits of the Final Rule.

List of Subjects in 17 CFR Part 23

Swaps, Swap dealers, Major swap participants, Capital and margin requirements.

For the reasons discussed in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 23 as set forth below:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 1. The authority citation for part 23 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

Section 23.160 also issued under 7 U.S.C. 2(i); Sec. 721(b), Pub. L. 111–203, 124 Stat. 1641 (2010).

■ 2. Add § 23.160 to read as follows:

§ 23.160 Cross-border application.

(a) *Definitions.* For purposes of this section only:

(1) *Foreign Consolidated Subsidiary* means a non-U.S. CSE in which an ultimate parent entity that is a U.S. person has a controlling financial interest, in accordance with U.S. GAAP, such that the U.S. ultimate parent entity includes the non-U.S. CSE's operating results, financial position and statement

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[288] As indicated in *supra* note 23, representatives of 26 regulatory authorities participated in the WGMR that developed the BCBS–IOSCO framework.

[289] *See* Proposed Capital Rule, 76 FR 27802.

of cash flows in the U.S. ultimate parent entity's consolidated financial statements, in accordance with U.S. GAAP.

(2) *Guarantee* means an arrangement pursuant to which one party to an uncleared swap has rights of recourse against a guarantor, with respect to its counterparty's obligations under the uncleared swap. For these purposes, a party to an uncleared swap has rights of recourse against a guarantor if the party has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from the guarantor with respect to its counterparty's obligations under the uncleared swap. In addition, in the case of any arrangement pursuant to which the guarantor has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from any other guarantor with respect to the counterparty's obligations under the uncleared swap, such arrangement will be deemed a guarantee of the counterparty's obligations under the uncleared swap by the other guarantor.

(3) *International standards* mean the margin policy framework for non-cleared, bilateral derivatives issued by the Basel Committee on Banking Supervision and the International Organization of Securities in September 2013, as subsequently updated, revised, or otherwise amended, or any other international standards, principles or guidance relating to margin requirements for non-cleared, bilateral derivatives that the Commission may in the future recognize, to the extent that they are consistent with United States law (including the margin requirements in the Commodity Exchange Act).

(4) *Non-U.S. CSE* means a covered swap entity that is not a U.S. person. The term "non-U.S. CSE" includes a "Foreign Consolidated Subsidiary" or a U.S. branch of a non-U.S. CSE.

(5) *Non-U.S. person* means any person that is not a U.S. person.

(6) *Ultimate parent entity* means the parent entity in a consolidated group in which none of the other entities in the consolidated group has a controlling interest, in accordance with U.S. GAAP.

(7) *United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

(8) *U.S. CSE* means a covered swap entity that is a U.S. person.

(9) *U.S. GAAP* means U.S. generally accepted accounting principles.

(10) *U.S. person* means:

(i) A natural person who is a resident of the United States;

(ii) An estate of a decedent who was a resident of the United States at the time of death;

(iii) A corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of entity similar to any of the foregoing (other than an entity described in paragraph (a)(10)(iv) or (v) of this section) (a "legal entity"), in each case that is organized or incorporated under the laws of the United States or that has its principal place of business in the United States, including any branch of such legal entity;

(iv) A pension plan for the employees, officers or principals of a legal entity described in paragraph (a)(10)(iii) of this section, unless the pension plan is primarily for foreign employees of such entity;

(v) A trust governed by the laws of a state or other jurisdiction in the United States, if a court within the United States is able to exercise primary supervision over the administration of the trust;

(vi) A legal entity (other than a limited liability company, limited liability partnership or similar entity where all of the owners of the entity have limited liability) that is owned by one or more persons described in paragraphs (a)(10)(i) through (v) of this section and for which such person(s) bears unlimited responsibility for the obligations and liabilities of the legal entity, including any branch of the legal entity; or

(vii) An individual account or joint account (discretionary or not) where the beneficial owner (or one of the beneficial owners in the case of a joint account) is a person described in paragraphs (a)(10)(i) through (vi) of this section.

(b) *Applicability of margin requirements.* The requirements of §§ 23.150 through 23.161 apply as follows.

(1) *Uncleared swaps of U.S. CSEs or Non-U.S. CSEs whose obligations under the relevant swap are guaranteed by a U.S. person*—(i) *Applicability of U.S. margin requirements; availability of substituted compliance for requirement to post initial margin.* With respect to each uncleared swap entered into by a U.S. CSE or a non-U.S. CSE whose obligations under the swap are guaranteed by a U.S. person, the U.S. CSE or non-U.S. CSE whose obligations under the swap are guaranteed by a U.S. person shall comply with the requirements of §§ 23.150 through 23.161 of this part, provided that the U.S. CSE or non-U.S. CSE whose obligations under the swap are guaranteed by a U.S. person may satisfy its requirement to post initial margin to certain counterparties to the extent provided in paragraph (b)(1)(ii) of this section.

(ii) *Compliance with foreign initial margin collection requirement.* A covered swap entity that is covered by paragraph (b)(1)(i) of this section may satisfy its requirement to post initial margin under this part by posting initial margin in the form and amount, and at such times, that its counterparty is required to collect initial margin pursuant to a foreign jurisdiction's margin requirements, but only to the extent that:

(A) The counterparty is neither a U.S. person nor a non-U.S. person whose obligations under the relevant swap are guaranteed by a U.S. person;

(B) The counterparty is subject to such foreign jurisdiction's margin requirements; and

(C) The Commission has issued a comparability determination under paragraph (c) of this section ("Comparability Determination") with respect to such foreign jurisdiction's requirements regarding the posting of initial margin by the covered swap entity (that is covered in paragraph (b)(1) of this section).

(2) *Uncleared swaps of Non-U.S. CSEs whose obligations under the relevant swap are not guaranteed by a U.S. person*—(i) *Applicability of U.S. Margin requirements except where an exclusion applies; Availability of substituted compliance.* With respect to each uncleared swap entered into by a non-U.S. CSE whose obligations under the relevant swap are not guaranteed by a U.S. person, the non-U.S. CSE shall comply with the requirements of §§ 23.150 through 23.161 except to the extent that an exclusion is available under paragraph (b)(2)(ii) of this section, provided that a non-U.S. CSE whose obligations under the relevant swap are not guaranteed by a U.S. person may satisfy its margin requirements under this part to the extent provided in paragraphs (b)(2)(iii) and (b)(2)(iv) of this section.

(ii) *Exclusion.* (A) Except as provided in paragraph (b)(2)(ii)(B) of this section, a non-U.S. CSE shall not be required to comply with the requirements of §§ 23.150 through 23.161 with respect to each uncleared swap it enters into to the extent that the following conditions are met:

(*1*) The non-U.S. CSE's obligations under the relevant swap are not guaranteed by a U.S. person;

(*2*) The non-U.S. CSE is not a U.S. branch of a non-U.S. CSE;

(*3*) The non-U.S. CSE is not a Foreign Consolidated Subsidiary; and

(*4*) The counterparty to the uncleared swap is a non-U.S. person (excluding a Foreign Consolidated Subsidiary or the U.S. branch of a non-U.S. CSE), whose obligations under the relevant swap are not guaranteed by a U.S. person.

(B) Notwithstanding paragraph (b)(2)(ii)(A) of this section, any uncleared swap of a non-U.S. CSE that meets the conditions for the Exclusion set forth in paragraph (b)(2)(ii)(A) must nevertheless comply with §§ 23.150 through 23.161 if:

(*1*) The uncleared swap of the non-U.S. CSE is not covered by a Comparability Determination with respect to the initial margin collection requirements in the relevant foreign jurisdiction in accordance with paragraph (c) of this section; and

(*2*) The non-U.S. CSE enters into an inter-affiliate swap(s), transferring any risk arising out of the uncleared swap described in paragraph (b)(2)(ii)(B)(*1*) of this section directly or indirectly, to a margin affiliate (as the term "margin affiliate" is defined in § 23.151 of this part) that is a U.S. CSE or a U.S. Guaranteed CSE.

(iii) *Availability of substituted compliance where the counterparty is not a U.S. CSE or a non-U.S. CSE whose obligations under the relevant swap are guaranteed by a U.S. person.* Except to the extent that an exclusion is available under paragraph (b)(2)(ii) of this section, with respect to each uncleared swap entered into by a non-U.S. CSE whose obligations under the relevant swap are not guaranteed by a U.S. person with a counterparty (except where the counterparty is either a U.S. CSE or a non-U.S. CSE whose obligations under the relevant swap are guaranteed by a U.S. person), the non-U.S. CSE whose obligations under the relevant swap are not guaranteed by a U.S. person may satisfy margin requirements under this part by complying with the margin requirements of a foreign jurisdiction to which such non-U.S. CSE (whose obligations under the relevant swap are not guaranteed by a U.S. person) is subject, but only to the extent that the Commission has issued a Comparability Determination under paragraph (c) of this section for such foreign jurisdiction.

(iv) *Availability of substituted compliance where the counterparty is a U.S. CSE or a non-U.S. CSE whose obligations under the relevant swap are guaranteed by a U.S. person.* With respect to each uncleared swap entered into by a non-U.S. CSE whose obligations under the relevant swap are not guaranteed by a U.S. person with a counterparty that is a U.S. CSE or a non-U.S. CSE whose obligations under the relevant swap are guaranteed by a U.S. person, the non-U.S. CSE (whose obligations under the relevant swap are not guaranteed by a U.S. person) may satisfy its requirement to collect initial margin under this part by collecting initial margin in the form and amount, and at such times and under such arrangements, that the non-U.S. CSE (whose obligations under the relevant swap are not guaranteed by a U.S. Person) is required to collect initial margin pursuant to a foreign jurisdiction's margin requirements, provided that:

(A) The non-U.S. CSE (whose obligations under the relevant swap are not guaranteed by a U.S. person) is subject to the foreign jurisdiction's regulatory requirements; and

(B) The Commission has issued a Comparability Determination with respect to such foreign jurisdiction's margin requirements.

(c) *Comparability determinations*—(1) *Eligibility requirements.* The following persons may, either individually or collectively, request a Comparability Determination with respect to some or all of the Commission's margin requirements:

(i) A covered swap entity that is eligible for substituted compliance under this section; or

(ii) A foreign regulatory authority that has direct supervisory authority over one or more covered swap entities and that is responsible for administering the relevant foreign jurisdiction's margin requirements.

(2) *Submission requirements.* Persons requesting a Comparability Determination should provide the Commission (either by hard copy or electronically):

(i) A description of the objectives of the relevant foreign jurisdiction's margin requirements;

(ii) A description of how the relevant foreign jurisdiction's margin requirements address, at minimum, each of the following elements of the Commission's margin requirements. Such description should identify the specific legal and regulatory provisions that correspond to each element and, if necessary, whether the relevant foreign jurisdiction's margin requirements do not address a particular element:

(A) The products subject to the foreign jurisdiction's margin requirements;

(B) The entities subject to the foreign jurisdiction's margin requirements;

(C) The treatment of inter-affiliate derivative transactions;

(D) The methodologies for calculating the amounts of initial and variation margin;

(E) The process and standards for approving models for calculating initial and variation margin models;

(F) The timing and manner in which initial and variation margin must be collected and/or paid;

(G) Any threshold levels or amounts;

(H) Risk management controls for the calculation of initial and variation margin;

(I) Eligible collateral for initial and variation margin;

(J) The requirements of custodial arrangements, including segregation of margin and rehypothecation;

(K) Margin documentation requirements; and

(L) The cross-border application of the foreign jurisdiction's margin regime.

(iii) A description of the differences between the relevant foreign jurisdiction's margin requirements and the International Standards;

(iv) A description of the ability of the relevant foreign regulatory authority or authorities to supervise and enforce compliance with the relevant foreign jurisdiction's margin requirements. Such description should discuss the powers of the foreign regulatory authority or authorities to supervise, investigate, and discipline entities for compliance with the margin requirements and the ongoing efforts of the regulatory authority or authorities to detect and deter violations of, and ensure compliance with, the margin requirements; and

(v) Copies of the foreign jurisdiction's margin requirements (including an English translation of any foreign language document);

(vi) Any other information and documentation that the Commission deems appropriate.

(3) *Standard of review.* The Commission will issue a Comparability Determination to the extent that it determines that some or all of the relevant foreign jurisdiction's margin requirements are comparable to the Commission's corresponding margin requirements. In determining whether the requirements are comparable, the Commission will consider all relevant factors, including:

(i) The scope and objectives of the relevant foreign jurisdiction's margin requirements;

(ii) Whether the relevant foreign jurisdiction's margin requirements achieve comparable outcomes to the Commission's corresponding margin requirements;

(iii) The ability of the relevant regulatory authority or authorities to supervise and enforce compliance with the relevant foreign jurisdiction's margin requirements; and

(iv) Any other facts and circumstances the Commission deems relevant.

(4) *Reliance*. Any covered swap entity that, in accordance with a Comparability Determination, complies with a foreign jurisdiction's margin requirements, would be deemed to be in compliance with the Commission's corresponding margin requirements. Accordingly, if the Commission determines that a covered swap entity has failed to comply with the foreign jurisdiction's margin requirements, it could initiate an action for a violation of the Commission's margin requirements. All covered swap entities, regardless of whether they rely on a Comparability Determination, remain subject to the Commission's examination and enforcement authority.

(5) *Conditions*. In issuing a Comparability Determination, the Commission may impose any terms and conditions it deems appropriate.

(6) *Modifications*. The Commission reserves the right to further condition, modify, suspend, terminate or otherwise restrict a Comparability Determination in the Commission's discretion.

(7) *Delegation of authority*. The Commission hereby delegates to the Director of the Division of Swap Dealer and Intermediary Oversight, or such other employee or employees as the Director may designate from time to time, the authority to request information and/or documentation in connection with the Commission's issuance of a Comparability Determination.

(d) *Non-netting jurisdiction requirements*. Except as provided in paragraph (e) of this section, if a CSE cannot conclude after sufficient legal review with a well-founded basis that the netting agreement described in § 23.152(c) meets the definition of "eligible master netting agreement" set forth in § 23.151, the CSE must treat the uncleared swaps covered by the agreement on a gross basis for the purposes of calculating and complying with the requirements of § 23.152(a) and § 23.153(a) to collect margin, but the CSE may net those uncleared swaps in accordance with § 23.152(c) and § 23.153(d) for the purposes of calculating and complying with the requirements of this part to post margin. A CSE that relies on this paragraph (d) must have policies and procedures ensuring that it is in compliance with the requirements of this paragraph, and maintain books and records properly documenting that all of the requirements of this paragraph (d) are satisfied.

(e) *Jurisdictions Where Compliance with Custodial Arrangement Requirements is Unavailable*. Sections 23.152(b), 23.157(b), and paragraph (d) of this section do not apply to an uncleared swap entered into by a Foreign Consolidated Subsidiary or a foreign branch of a U.S. CSE if:

(1) Inherent limitations in the legal or operational infrastructure in the applicable foreign jurisdiction make it impracticable for the CSE and its counterparty to post any form of eligible initial margin collateral recognized pursuant to § 23.156 in compliance with the custodial arrangement requirements of § 23.157;

(2) The CSE is subject to foreign regulatory restrictions that require the CSE to transact in uncleared swaps with the counterparty through an establishment within the foreign jurisdiction and do not accommodate the posting of collateral for the uncleared swap in compliance with the custodial arrangements of § 23.157 in the United States or a jurisdiction for which the Commission has issued a comparability determination under paragraph (c) of this section with respect to § 23.157;

(3) The counterparty to the uncleared swap is a non-U.S. person that is not a CSE, and the counterparty's obligations under the uncleared swap are not guaranteed by a U.S. person;

(4) The CSE collects initial margin for the uncleared swap in accordance with § 23.152(a) in the form of cash pursuant to § 23.156(a)(1)(i), and posts and collects variation margin in accordance with § 23.153(a) in the form of cash pursuant to § 23.156(a)(1)(i);

(5) For each broad risk category, as set out in § 23.154(b)(2)(v), the total outstanding notional value of all uncleared swaps in that broad risk category, as to which the CSE is relying on this paragraph (e), may not exceed 5% of the CSE's total outstanding notional value for all uncleared swaps in the same broad risk category;

(6) The CSE has policies and procedures ensuring that it is in compliance with the requirements of this paragraph (e); and

(7) The CSE maintains books and records properly documenting that all of the requirements of this paragraph (e) are satisfied.

Issued in Washington, DC, on May 24, 2016, by the Commission.

Christopher J. Kirkpatrick,
Secretary of the Commission.

Note: The following table and appendices will not appear in the Code of Federal Regulations.

Table A—Application of the Final Rule

The following table should be read in conjunction with the rest of the preamble and the text of the Final Rule, as well as the footnotes at the end of the table.

CSE	Counterparty	Applicable margin requirements
U.S. CSE or Non-U.S. CSE (including U.S. branch of a non-U.S. CSE and a Foreign Consolidated Subsidiary ("FCS")) whose obligations under the relevant swap *are* guaranteed by a U.S. person.	• U.S. person (including U.S. CSE) • Non-U.S. person (including non-U.S. CSE, FCS, and U.S. branch of a non-U.S. CSE) whose obligations under the relevant swap are guaranteed by a U.S. person.	U.S. (All).
	• Non-U.S. person (including non-U.S. CSE, FCS and U.S. branch of a non-U.S. CSE) whose obligations under the relevant swap are not guaranteed by a U.S. person.	U.S. (Initial Margin collected by CSE in column 1). Substituted Compliance (Initial Margin posted by CSE in column 1). U.S. (Variation Margin).
FCS whose obligations under the relevant swap *are not* guaranteed by a U.S. person. or U.S. branch of a non-U.S. CSE whose obligations under the relevant swap *are not* guaranteed by a U.S. person.	• U.S. CSE • Non-U.S. CSE (including U.S. branch of a non-U.S. CSE and FCS) whose obligations under the relevant swap are guaranteed by a U.S. person.	U.S. (Initial Margin posted by CSE in column 1). Substituted Compliance (Initial Margin collected by CSE in column 1). U.S. (Variation Margin).

CSE	Counterparty	Applicable margin requirements
	• U.S. person (except as noted above for a CSE). • Non-U.S. person whose obligations under the swap are guaranteed by a U.S. person (except a non-U.S. CSE, U.S. branch of a non-U.S. CSE, and FCS whose obligations are guaranteed, as noted above). • Non-U.S. person (including non-U.S. CSE, U.S. branch of a non-U.S. CSE, and a FCS) whose obligations under the relevant swap are not guaranteed by a U.S. person.	Substituted Compliance (All).
Non-U.S. CSE (that is not an FCS or a U.S. branch of a non-U.S. CSE) whose obligations under the relevant swap *are not* guaranteed by a U.S. person.	• U.S. CSE .... • Non-U.S. CSE (including U.S. branch of a non-U.S. CSE and FCS) whose obligations under the swap are guaranteed by a U.S. person.	U.S. (Initial Margin posted by CSE in column 1). Substituted Compliance (Initial Margin collected by CSE in column 1). U.S. (Variation Margin).
	• U.S. person (except as noted above for a CSE). • Non-U.S. person whose obligations under the swap are guaranteed by a U.S. person (except a non-U.S. CSE whose obligations are guaranteed, as noted above). • U.S. branch of a non-U.S. CSE or FCS, in each case whose obligations under the relevant swap are not guaranteed by a U.S. person.	Substituted Compliance (All).
	• Non-U.S. person (including a non-U.S. CSE, but not an FCS or a U.S. branch of a non-U.S. CSE) whose obligations under the relevant swap are not guaranteed by a U.S. person.	Excluded (except in connection with certain inter-affiliate swaps).

[1] The term "U.S. person" is defined in § 23.160(a)(10) of the Final Rule. A "non-U.S. person" is any person that is not a "U.S. person." The term swap means an uncleared swap and is defined in § 23.151 of the Final Margin Rule. *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016).

[2] As used in this table, the term "Foreign Consolidated Subsidiary" or "FCS" refers to a non-U.S. CSE in which an ultimate parent entity that is a U.S. person has a controlling financial interest, in accordance with U.S. GAAP, such that the U.S. ultimate parent entity includes the non-U.S. CSE's operating results, financial position and statement of cash flows in the U.S. ultimate parent entity's consolidated financial statements, in accordance with U.S. GAAP. The term "ultimate parent entity" means the parent entity in a consolidated group in which none of the other entities in the consolidated group has a controlling interest, in accordance with U.S. GAAP.

[3] Under § 23.160(e) of the Final Rule, in certain foreign jurisdictions where inherent limitations in the legal or operational infrastructure of the jurisdiction make it impracticable for the CSE and its counterparty to post initial margin for the uncleared swap in compliance with the custodial arrangement requirements of the Final Margin Rule, an FCS (or non-U.S. branch of a U.S. CSE) may be eligible to engage in uncleared swaps with certain non-U.S. counterparties, subject to a limit, but only if certain conditions are satisfied. Under the limit, for each broad risk category set out in § 23.154(b)(2)(v), the total outstanding notional value of all uncleared swaps in that broad risk category, as to which the CSE is relying on § 23.160(e), may not exceed 5% of the CSE's total outstanding notional value for all uncleared swaps in the same broad risk category. The specified conditions include collecting the gross amount of initial margin in cash, and posting and collecting variation margin in cash, in accordance with the Final Margin Rule. The CSE's counterparty must be a non-U.S. person that is not a CSE, and the counterparty's obligations under the swap must not be guaranteed by a U.S. person. This provision does not apply if the CSE that is subject to the foreign regulatory restrictions is permitted to post collateral for the uncleared swap in compliance with the custodial arrangements of § 23.157 in the United States or a jurisdiction for which the Commission has issued a comparability determination with respect to § 23.157. An FCS (or non-U.S. branch of a U.S. CSE) that relies on this special provision would not post initial margin in qualifying foreign jurisdictions, and would not be required to hold initial margin that they collect with one or more custodians that are not the CSE, its counterparty, or an affiliate of the CSE or its counterparty as would otherwise be required by § 23.157(b) of the Final Margin Rule. CSEs that rely on this special provision must have policies and procedures to ensure compliance and maintain books and records properly documenting that all of the requirements of this provision are satisfied.

If a CSE cannot conclude after sufficient legal review with a well-founded basis that the netting agreement with a counterparty in a foreign jurisdiction meets the definition of an "eligible master netting agreement" set forth in the Final Margin Rule, the CSE must treat the uncleared swaps covered by the netting agreement on a gross basis in determining the amount of initial and variation margin that it must collect, but the CSE may net those uncleared swaps in accordance with the netting provisions of the Final Margin Rule in determining the amount of initial and variation margin that it must post to the counterparty. The CSE must have policies and procedures to ensure compliance and maintain books and records properly documenting that all of the requirements of this provision are satisfied.

[4] In order to preserve the Commission's intent with respect to the treatment of inter-affiliate swaps under the Final Margin Rule, the Exclusion is not available if the market-facing swap of the non-U.S. CSE (that is otherwise eligible for the Exclusion) is not subject to comparable initial margin collection requirements in the home jurisdiction and any of the risk associated with the uncleared swap is transferred, directly or indirectly, through inter-affiliate swaps, to a U.S. CSE or a U.S. Guaranteed CSE. Under the Final Margin Rule, a CSE is not required to collect initial margin from its affiliate, provided, among other things, that affiliate collects initial margin on its market-facing swaps or is subject to comparable initial margin collection requirements (in the case of non-U.S. affiliates that are financial end-users) on their own market-facing swaps.

Appendices to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Massad and Commissioner Bowen voted in the affirmative. Commissioner Giancarlo voted in the negative.

Appendix 2—Statement of Chairman Timothy G. Massad

I am pleased that today, the Commission has adopted a cross-border approach to our rule setting margin for uncleared swaps.

Our margin rule is one of the most important elements of swaps market regulation set forth in the Dodd-Frank Act. Margin requirements help ensure that uncleared swaps, which will always remain a sizable portion of the market, do not generate excessive uncollateralized risk. Last December, the Commission adopted a strong and sensible margin rule. It requires swap dealers and major swap participants to post and collect margin in their transactions with one another, and with financial entities with which they have significant exposures.

The risks our margin rule seeks to prevent do not only originate in the United States. The interconnected nature of the global swaps market means that risks created across the globe have the potential to flow back into the United States. We recognize that having a global swaps market is beneficial to all users. Therefore, one of the most important objectives we already accomplished was to ensure our margin rule is substantially similar to comparable international rules. Harmonization is critical to creating a sound international framework for regulation.

We also recognize that not all jurisdictions will adopt strong margin rules. And even where rules are substantially harmonized, there will still be some differences. Because cross-border transactions are commonplace, we must clarify which rules apply in different situations. Today, the Commission has acted to provide that clarification.

First, we have drawn a clear, reasonable line as to when the CFTC should take offshore risk into account. Today's action ensures that our rule, or a comparable international measure, applies to swap dealers that are foreign consolidated subsidiaries of a U.S. parent. This helps address the risk that can flow back into the United States from that offshore activity, even when the subsidiary is not explicitly guaranteed by the U.S. parent. This treatment of foreign consolidated subsidiaries—and our general cross-border approach—is also consistent with the approach taken by the U.S. prudential regulators.

At the same time, to further our efforts toward harmonization, and to avoid conflicts with the rules of other jurisdictions, we have provided for a broad scope of substituted compliance. Not only will non-U.S. swap dealers be eligible for substituted compliance, so will U.S. swap dealers with respect to the margin they post to non-U.S. persons. This approach is an appropriate response to the complex world created by the swap industry, where global swap dealers can book a swap in a variety of ways. Dealers may book swaps through different subsidiaries, branches or affiliates all over the world, and they may do so based on a number of considerations, such as the most favorable legal treatment. Our approach is intended to protect our markets against risk coming from these cross-border transactions, while taking into account the interests of other regulators.

The process for conducting a comparability assessment of another jurisdiction's rules is similar to what we have done in other areas. The rule specifies the various factors that should be considered, and indeed there is no reasonable way one can make a determination without evaluating those factors. One important consideration will be compliance with the international framework developed by the Basel Committee on Banking Supervision and the International Organization of Securities Commissions. Our approach will look at the elements of each jurisdiction's rule set with an eye towards a flexible, outcome-based determination. The process of making comparability assessments can take time. In light of the impending September 1 compliance date, I have asked the CFTC staff to work closely with other domestic and international regulators, as well as industry participants, and endeavor to effect a smooth transition.

The approach we have finalized today helps ensure the safety and soundness of registered swap dealers, and reduces the potential for conflict with the rules of other international regulators. I thank all those who provided us with important feedback on these issues. I also thank CFTC staff for their work on this rule, and my fellow Commissioners for their careful consideration of this measure.

Appendix 3—Concurring Statement of Commissioner Sharon Y. Bowen

Margin and Capital as the Pillars of Market Safety

Margin and capital are two of the most important tools for risk mitigation for the derivatives markets. Thus it is very important that we get our rules on margin and capital right in order to accomplish the reform required under the Dodd-Frank Wall Street Reform and Consumer Protection Act.[290] As many of you know, last December, I voted against the final margin for uncleared swaps rule because I did not believe that it was strong enough to fully protect our system. As I said in December, adequate margin is fundamental to market safety as it is a "critical shock absorber for the bumps and potholes of our financial markets and for the risk of contagion and spillovers." [291] I am even more confident in that view today.

Today we vote on a critical supplement to that margin rule. Specifically, today's rule would allow registered dealers to substitute the margin rules of comparable jurisdictions for our rules, when dealing with non-US counterparties, under certain conditions. Needless to say, cross-border regulation is central to our margin rule functioning effectively since our markets are global.

I intend to vote yes for this cross-border rule because I want to give the market legal certainty, as the first compliance date for our margin rules, as well as those of regulators across jurisdictions—September 1, 2016—looms.[292] It is important that market participants have enough time to prepare in advance of this date so as to minimize market instability. We also want to minimize the risk of creating regulatory arbitrage across jurisdictions. While my concerns about our margin regime remain, I recognize that there is no opportunity in today's cross-border margin decision to remedy those errors.

One of the major drawbacks of our margin rulemaking is that it was not done in conjunction with our capital rulemaking. Margin and capital are intertwined—if our margin rule is weak, our capital rule needs to be stronger to compensate. If both are strong, investors and consumers can be confident that we have learned the lessons of the past, and have placed adequate protections in place against future financial instability. But, if both are weak, we have surrendered our best defenses against contagion. We put the interests of our investors at risk when we view regulation in a piecemeal and non-comprehensive fashion, because we are not seeing the whole picture. So, as I vote today on cross-border margin, my mind is on our upcoming capital rule proposal.

Any firm that aspires to be a swap dealer is aspiring to be a significant player in our economy. They must have the capacity to not only stand ready to be the buyer to each seller and the seller to each buyer, but to maintain those positions over years. Their creditworthiness must be above reproach. In that way, market participants, *including commercial end-users who need to hedge,* can be confident that their dealer will be there during times of stability and crisis. It is therefore critical to the health of our economy that the market trusts, and with good reason, that our dealers are robust and steadfast—that they are able to withstand the financial swings that are endemic to today's economy. Thus while strong capital rules may prevent some entities from entering the dealing business, they ultimately benefit the dealers, their customers and the whole economy.

In order to create a capital rule that appropriately manages risk for the American people and our critical economy, our capital rule proposal must:

(1) *Not Be Weaker Than Our Comparable Prudential Regulators' Rule:* The capital proposal, and subsequent final rule, must be as strong as those of the Prudential Regulators. We are required under law to establish minimum capital requirements that are "comparable" to our Prudential Regulator counterparts "to the maximum extent

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[290] Public Law 111–203, 124 Stat. 1376 (2010).

[291] *http://www.cftc.gov/PressRoom/SpeechesTestimony/bowenstatement121615a.*

[292] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636, 675 (Jan. 6, 2016).

practicable."[293] Not only is this our legal obligation, but it is a sensible one as it prevents entities from gaming the system, and organizing their businesses in order to have the lowest capital requirements possible. We do not want our regulatory framework to be an escape hatch from strong risk management.

(2) *Account for the Entire Risk to the Dealer:* The capital proposal should also require dealers to hold sufficient capital to cover the *entirety* of the risk posed by the full gamut of derivatives products that they hold—including those products, which, for various reasons, we did not impose a margin requirement, such as inter-affiliate swaps and swaps with financial counterparties that are below the $8 billion threshold. This is consistent with our mandate under law to "take into account the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in and the other activities conducted by that person that are not otherwise subject to regulation. . . ."[294] This is an important requirement. The Congressional authors understood that just because a particular category of swaps that a dealer holds are not subject to a regulatory requirement, does not mean that the dealers, and therefore their customers, are not vulnerable to the risk posed by them.

(3) *Include Effective Elements of Strong Capital Models:* Our capital proposal should take into consideration respected, and effective capital models from other regulators. As of now, we have two well-regarded capital models: The Basel rules for banks, and the Securities and Exchange Commission's (SEC's) rule for Broker-Dealers. The Basel rule has many positive attributes—including the fact that it not only has strong capital requirements but also a liquidity, leverage and funding ratio.[295] We need look no further than financial companies before the 2008 crisis to understand the need for leverage requirements. For instance, it was estimated that, prior to the crisis, some firms had debt that was 30 to 40 times their net capital.[296] And we have very present examples of commercial companies that evidence the need for funding requirements.[297] The SEC's broker dealer rule also has its positives including that it does not allow for internal models, which came under fire after the crisis for allowing excessive leverage,[298] and it is liquidity-based such that the dealer is obligated to maintain highly liquid assets to cover its liabilities.[299] Our capital rule proposal should be as strong, if not stronger, than these models.

(4) *Address Risks Posed by Swap-Dealing of Non-Financial Companies:* Some commercial entities are also registered as swap dealers, and others may decide to do so in the future. Having commercial end-users that are engaging in more than a de minimis amount of swap dealing may increase market risk. Thus it is important that we are able to isolate their swap dealing business from the regular business, so that we can properly track their activities as a dealer.

(5) *Be Based on Data-Driven Risk Assessment, Not Industry Preference:* As a regulator, anything that we propose needs to be based on our data-driven risk assessment, not on the desire to ensure that all entities that want to be dealers are able to maintain their current business models without any changes. In response to our proposal, market participants are then free to provide data to explain why our risk assessment may be inappropriate and to inform us of the pragmatic restraints. While encouraging more entrants into the market maybe *a* regulatory goal, doing all we can to prevent the next catastrophic financial crisis that wipes out pensions, is our *fundamental* goal.

Experience has taught us that comprehensive, well-considered review is critical when considering major regulations. Ten years ago, too many people in industry did not engage in such well-considered review when crafting complicated financial deals. In the end, that lack of consideration came back to haunt us all when the mortgage bubble burst and unexpectedly exposed many large financial institutions to massive losses that threatened the entire financial system. In the end, the American public had to save the system at great expense, and the ensuing rescue left many angry, alienated, and disaffected. Today, nearly eight years later, that anger still exists. We all pay a great price when we move forward in finance with insufficient analysis and review.

Thus, for the sake of market certainty, I am voting yes to this rule. But I encourage my fellow Commissioners to work with me to develop a strong, comprehensive capital rule so that the American people can have the appropriate safeguards to secure our economy. Thank you.

Appendix 4—Statement of Dissent by Commissioner J. Christopher Giancarlo

I respectfully dissent from the final rule on the cross-border application of margin requirements for uncleared swaps.

In September 2009, the leaders of the G–20 countries agreed to launch a framework for "strong, sustainable and balanced global growth" to generate "a durable recovery that creates the good jobs our people need."[1] The agreement included a commitment "to take action at the national and international level to raise standards together so that our national authorities implement global standards consistently in a way that ensures a level playing field and avoids fragmentation of markets, protectionism, and regulatory arbitrage."[2]

In keeping with that agreement, representatives of more than 20 regulatory authorities, including the CFTC, participated in consultations with the Basel Committee on Banking Supervision ("BCBS") and the Board of the International Organization of Securities Commissions ("IOSCO") to develop an international framework setting margin standards for uncleared derivatives ("BCBS–IOSCO framework").[3] That 2013 framework stresses the importance of developing consistent requirements across jurisdictions to avoid conflicting or duplicative standards.[4]

Today, instead of recognizing and building upon the strong foundation for mutual recognition of foreign regulatory regimes created by the G–20 commitments and the BCBS–IOSCO framework, as well as the CFTC's own history of using a principles-based, holistic approach to comparability determinations,[5] the Commission is adopting a set of preconditions to substituted compliance that is overly complex, unduly narrow and operationally impractical.

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[293] Commodity Exchange Act (CEA) 6s(e)(3)(D).

[294] CEA 6s(e)(2)(C).

[295] With the exception of the capital charge to the segregated customer funds that have been set aside to secure cleared products. *See* "Speech of Commissioner Sharon Y. Bowen at George Washington Law, 2016 Manuel F. Cohen Lecture," Feb. 4, 2016, *available at http://www.cftc.gov/PressRoom/SpeechesTestimony/opabowen-8.*

[296] E.g., Julie Satow, "Ex-SEC Official Blames Agency for Blow-Up of Broker-Dealers," The New York Sun (September 18, 2008) ("[B]roker dealers . . . [had] debt-to-net-capital ratios, sometimes, as in the case of Merrill Lynch, to as high as 40-to-1."), *available at http://www.nysun.com/business/ex-sec-official-blames-agency-for-blow-up/86130/*; Alan S. Blinder, "Six Errors on the Path to the Financial Crisis," New York Times (January 25, 2009) (stating that in 2008, securities firms had leverage ratios of "33 to 1"), *available at http://www.nytimes.com/2009/01/25/business/economy/25view.html?_r=0.*

[297] Jasmine Ng and David Yong, "Noble Group Gets $3 Billion in Credit Facilities," Bloomberg.com (May 12, 2016), *available at http://www.bloomberg.com/news/articles/2016-05-12/noble-group-agrees-3-billion-credit-facilities-with-lenders. See also* Sarah Kent, Scott Patterson, and Margot Patrick, "Glencore Discloses More Details on Financing," The Wall Street Journal (October 7, 2015), *available at http://www.wsj.com/articles/glencore-reveals-financing-deals-to-fend-off-critics-1444137982.*

[298] *See supra* note 7.

[299] Securities Exchange Act (SEA) Rule 15c3–1.

[1] G–20 Leaders' Statement, The Pittsburgh Summit, Preamble at par. 13 (Sept. 24–25, 2009).

[2] *Id.* at par. 12.

[3] Margin Requirements for Non-centrally Cleared Derivatives (Sept. 2013), *available at http://www.bis.org/publ/bcbs261.pdf*, revised Mar. 2015, *available at http://www.bis.org/bcbs/publ/d317.pdf.*

[4] *Id.* at 23.

[5] The CFTC has a long history of working collaboratively with foreign regulators to facilitate cross-border business. For example, under Commission Regulation 30.10, adopted in 1987, if the CFTC determines that a foreign regulatory regime offers comparable protections to U.S. customers transacting in foreign futures and options, and there is an appropriate information-sharing arrangement in place, the CFTC has allowed foreign brokers to comply with their home-country regulations in lieu of Commission regulations. Similarly, since 1996 the Commission has permitted direct access by U.S. customers to foreign boards of trade ("FBOTs") without requiring the FBOT to register with the CFTC as a derivatives contract market ("DCM"). In determining the comparability of the foreign regulatory regime the Commission does not engage in a line-by-line examination of the foreign regulator's approach to supervising the FBOT it regulates. Rather, the Commission conducts a principles-based review to determine whether the foreign regime supports and enforces regulatory oversight of the FBOT and its clearing organization in a substantially equivalent manner as that used by the CFTC in its oversight of DCMs and clearing organizations. *See* Registration of Foreign Boards of Trade, 76 FR 80674, 80680 (Dec. 23, 2011).

First, the rule establishes a complicated matrix of potential cross-border counterparties under which substituted compliance is either not permitted, is partially permitted, or is fully permitted, depending upon the category in which the particular transaction fits. Next, where permitted, the CFTC will conduct an "element-by-element" analysis of CFTC and foreign margin rules under which a transaction may be subject to a patchwork of U.S. and foreign regulation.[6] The CFTC will follow this "element-by-element" approach instead of assessing a foreign authority's margin regime as a whole.

In response to commenters who observed that today's approach will undermine the BCBS–IOSCO framework, the Commission acknowledges that consistency with the framework is necessary, but argues that the framework leaves certain elements open to interpretation by each regulator, including the CFTC.[7] For these elements, the Commission undertakes to use an outcome-based analysis, but will also engage in a fact-specific inquiry of each legal and regulatory provision that corresponds to each element.

In effect, the Commission's approach is somewhat principles-based, except when it is rules-based and somewhat objective, except when it is subjective.

Today's muddled methodology invites foreign regulators to respond in kind. It may well set us off down the same protracted, circuitous and uncertain path that the CFTC and the European Union took in the context of U.S. central counterparty clearinghouse equivalence. The approach is impractical, unnecessary and contrary to the cooperative spirit of the 2009 G–20 Pittsburgh Accords.[8]

Rather than conducting a granular rule-by-rule comparison, the CFTC should focus on whether a foreign regulator's margin regime, in the aggregate, provides a sufficient level of risk mitigation in connection with the execution of uncleared swaps. The BCBS–IOSCO framework does just that. Compliance with it should be straightforward and unconditional to prevent the "fragmentation of markets, protectionism, and regulatory arbitrage" that global regulators were charged to avoid.

As confusing as this rule is, what is important is not that hard to understand. American workers need quality American jobs. They need them in factories, farms and offices across the United States. The businesses that employ them want to sell their goods and services both here and abroad. To succeed globally, American businesses need U.S.-based financial institutions to support them around the world with competitively priced risk management services.

Unfortunately, this complicated rule will make it harder for U.S. financial institutions to compete globally and serve American businesses. When businesses are placed at a competitive disadvantage, they hire fewer workers. With over 94 million Americans now out of the workforce,[9] that is unacceptable. Therefore, I oppose this rule—it's that simple.

[FR Doc. 2016–12612 Filed 5–27–16; 8:45 am]

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[6] Such a result would be antithetical to element seven of the BCBS–IOSCO framework, which requires that there be no application of duplicative or conflicting margin requirements to the same transaction or activity. The framework advises that "[w]hen a transaction is subject to two sets of rules (duplicative requirements), the home and the host regulators should endeavor to (1) harmonize the rules to the extent possible or (2) apply only one set of rules, by recognizing the equivalence and comparability of their respective rules." BCBS–IOSCO framework at 23.

[7] In footnote 232 of the preamble the Commission cites, for example, the definition of "derivative," the list of assets eligible to post as collateral, the degree to which margin would be protected under the local bankruptcy regime, and how transactions with affiliates are treated.

[8] I am also concerned about the Commission's unwillingness to delay the cross-border application of its margin rules until after it has made comparability determinations. This will bring into the CFTC's regulatory ambit many cross-border transactions over which U.S. jurisdiction is inappropriate and an undue drain on precious regulatory resources.

[9] Bureau of Labor Statistics, *The Employment Situation—April 2016,* U.S. DEPARTMENT OF LABOR, May 6, 2016, *http://www.bls.gov/news.release/empsit.nr0.htm.*

Notices

Federal Register
Vol. 81, No. 104
Tuesday, May 31, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Proposed Collection, Comment Request: Final Rule, Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act ("PRA"), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice is being published concurrently with the publication and adoption of the final rule titled "Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements" ("Final Rule"), which addresses the cross-border application of the Commission's margin requirements for uncleared swaps of covered swap entities ("CSEs"). This notice solicits comments on a new information collection that applies to CSEs that rely on a special provision of the Final Rule applicable to certain foreign jurisdictions where CSEs are unable to conclude, with a well-founded basis, that the netting agreement with a counterparty in that foreign jurisdiction meets the definition of an "eligible master netting agreement" set forth in the Commission's final margin rule ("Final Margin Rule") ("non-netting jurisdictions"). This notice also solicits comments on a new information collection that applies to Foreign Consolidated Subsidiaries (as defined in the Final Rule) and foreign branches of U.S. CSEs that rely on a special provision of the Final Rule applicable to certain foreign jurisdictions where limitations in the legal or operational infrastructure of the jurisdiction make it impracticable for the CSE and its counterparty to post initial margin pursuant to custodial arrangements that comply with the Final Margin Rule ("non-segregation jurisdictions"). The new information collections covered by this notice require CSEs that avail themselves of the special provisions for non-netting jurisdictions and non-segregation jurisdictions, respectively, to maintain books and records properly documenting that all of the requirements of the special provision(s) upon which they rely are satisfied (including policies and procedures ensuring that they are in compliance with any applicable requirements).

DATES: Comments must be submitted on or before August 1, 2016.

ADDRESSES: You may submit comments, identified by "Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; Comparability Determinations with Margin Requirements," and "OMB Control No. 3038–0111," by any of the following methods:

- The Agency's Web site, at *http://comments.cftc.gov/*. Follow the instructions for submitting comments through the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.
- *Federal eRulemaking Portal: http://www.regulations.gov/*. Follow the instructions for submitting comments through the Portal.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov*.

FOR FURTHER INFORMATION CONTACT: Laura B. Badian, Assistant General Counsel, (202) 418–5969, *lbadian@cftc.gov;* Paul Schlichting, Assistant General Counsel, (202) 418–5884, *pschlichting@cftc.gov;* Elise Bruntel, Counsel, (202) 418–5577, *ebruntel@cftc.gov;* or Herminio Castro, Counsel, (202) 418–6705, *hcastro@cftc.gov;* Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget ("OMB") for each collection of information they conduct or sponsor. "Collection of Information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

Title: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; Comparability Determinations with Margin Requirements. (OMB Control No. 3038–0111). This is a request for a revision of a currently approved information collection.

Abstract: Section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"),[1] amended the Commodity Exchange Act ("CEA"), to add, as section 4s(e) thereof, provisions concerning the setting of initial and variation margin requirements for swap dealers and major swap participants. [2] Each swap dealer and major swap participant for which there is a Prudential Regulator, as defined in section 1a(39) of the CEA,[3] must meet margin requirements established by the applicable Prudential

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[1] Pub. L. 111–203, 124 Stat. 1376 (2010).

[2] 7 U.S.C. 6s(e).

[3] 7 U.S.C. 1a(39).

Regulator, and each CSE must comply with the Commission's margin requirements. With regard to the cross-border application of the swap provisions enacted by Title VII of the Dodd-Frank Act, section 2(i) of the CEA provides the Commission with express authority over activities outside the United States relating to swaps when certain conditions are met. Specifically, section 2(i) of the CEA provides that the provisions of the CEA relating to swaps enacted by Title VII of the Dodd-Frank Act (including Commission rules and regulations promulgated thereunder) shall not apply to activities outside the United States unless those activities (1) have a direct and significant connection with activities in, or effect on, commerce of the United States or (2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of Title VII.[4] Because margin requirements are critical to ensuring the safety and soundness of a CSE and supporting the stability of the U.S. financial markets, the Commission believes that its margin rules should apply on a cross-border basis in a manner that effectively addresses risks to the registered CSE and the U.S. financial system.

Concurrently with this notice, the Commission published a Final Rule that establishes margin requirements for uncleared swaps of CSEs (with substituted compliance available in certain circumstances), except as to a narrow class of uncleared swaps between a non-U.S. CSE and a non-U.S. counterparty that fall within a limited exclusion (the "Exclusion"). As described below, the adopting release for the Final Rule contained a collection of information regarding requests for comparability determinations, which was previously included in the proposing release, and for which the Office of Management and Budget ("OMB") assigned OMB control number 3038–0111, titled "Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; Comparability Determinations with Margin Requirements." In addition, the adopting release included two additional information collections regarding non-segregation jurisdictions[5] and non-netting jurisdictions[6] that were not previously proposed. Accordingly, the Commission, through this notice is requesting approval by OMB of this new information collection under OMB Control Number 3038–0111.

Section 23.160(d) of the Final Rule includes a special provision for non-netting jurisdictions. This provision allows CSEs that cannot conclude after sufficient legal review with a well-founded basis that the netting agreement with a counterparty in a foreign jurisdiction meets the definition of an "eligible master netting agreement" set forth in the Final Margin Rule to nevertheless net uncleared swaps in determining the amount of margin that they post, provided that certain conditions are met.[7] In order to avail itself of this special provision, the CSE must treat the uncleared swaps covered by the agreement on a gross basis in determining the amount of initial and variation margin that it must collect, but may net those uncleared swaps in determining the amount of initial and variation margin it must post to the counterparty, in accordance with the netting provisions of the Final Margin Rule.[8] A CSE that enters into uncleared swaps in "non-netting" jurisdictions in reliance on this provision must have policies and procedures ensuring that it is in compliance with the special provision's requirements, and maintain books and records properly documenting that all of the requirements of this exception are satisfied.[9]

Section 23.160(e) of the Final Rule includes a special provision for non-segregation jurisdictions that allows non-U.S. CSEs that are Foreign Consolidated Subsidiaries (as defined in the Final Rule) and foreign branches of U.S. CSEs to engage in swaps in foreign jurisdictions where inherent limitations in the legal or operational infrastructure make it impracticable for the CSE and its counterparty to post collateral in compliance with the custodial arrangement requirements of the Commission's margin rules, subject to certain conditions. In order to rely on this special provision, a Foreign Consolidated Subsidiary or foreign branch of a U.S. CSE is required to satisfy all of the conditions of the rule, including that (1) inherent limitations in the legal or operational infrastructure of the foreign jurisdiction make it impracticable for the CSE and its counterparty to post any form of eligible initial margin collateral for the uncleared swap pursuant to custodial arrangements that comply with the Commission's margin rules; (2) foreign regulatory restrictions require the CSE to transact in uncleared swaps with the counterparty through an establishment within the foreign jurisdiction and do not permit the posting of collateral for the swap in compliance with the custodial arrangements of section 23.157 of the Final Margin Rule in the United States or a jurisdiction for which the Commission has issued a comparability determination under the Final Rule with respect to section 23.157; (3) the CSE's counterparty is not a U.S. person and is not a CSE, and the counterparty's obligations under the uncleared swap are not guaranteed by a U.S. person;[10] (4) the CSE collects initial margin in cash on a gross basis, in cash, and posts and collects variation margin in cash, for the uncleared swap in accordance with the Final Margin Rule; (5) for each broad risk category, as set out in § 23.154(b)(2)(v) of the Final Margin Rule, the total outstanding notional value of all uncleared swaps in that broad risk category, as to which the CSE is relying on § 23.160 (e), may not exceed 5 percent of the CSE's total outstanding notional value for all uncleared swaps in the same broad risk category; (6) the CSE has policies and procedures ensuring that it is in compliance with the requirements of this provision; and (7) the CSE maintains books and records properly documenting that all of the requirements of this provision are satisfied.[11] The new information collections covered by this notice require CSEs to have policies and procedures ensuring that they are in compliance with all of the requirements of the special provisions for non-netting jurisdictions and non-segregation provisions, respectively, and to maintain books and records properly documenting that all of the requirements of the special provisions for non-netting jurisdictions and non-segregation jurisdictions, respectively, are satisfied. Both information collections are necessary as a means for the Commission to be able to determine that CSEs relying on these special provisions are entitled to do so and are complying with the special provisions' requirements. Both information collections are also necessary to implement sections 4s(e) of the CEA, which mandates that the Commission adopt rules establishing minimum initial and variation margin requirements for CSEs on all swaps that are not cleared by a registered derivatives clearing organization, and section 2(i) of the CEA, which provides that the provisions of the CEA relating to swaps that were enacted by Title VII of the Dodd-Frank Act (including any rule prescribed or regulation promulgated thereunder) apply to activities outside the United States that have a direct and significant connection with activities in, or effect on, commerce of the United States. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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[4] 7 U.S.C. 2(i).

[5] As used in the adopting release, a "non-segregation jurisdiction" is a jurisdiction where inherent limitations in the legal or operational infrastructure of the foreign jurisdiction make it impracticable for the CSE and its counterparty to post initial margin pursuant to custodial arrangements that comply with the Commission's margin rules, as further described in section II.B.4.b of the adopting release.

[6] As used in the adopting release, a "non-netting jurisdiction" is a jurisdiction in which a CSE cannot conclude, with a well-founded basis, that the netting agreement with a counterparty in that foreign jurisdiction meets the definition of an "eligible master netting agreement" set forth in the Final Margin Rule, as described in section II.B.5.b of the adopting release.

[7] The Final Margin Rule permits offsets in relation to either initial margin or variation margin calculation when (among other things), the offsets related to swaps are subject to the same eligible master netting agreement. This ensures that CSEs can effectively foreclose on the margin in the event of a counterparty default, and avoids the risk that the administrator of an insolvent counterparty will "cherry-pick" from posted collateral to be returned.

[8] In the event that the special provision for non-segregation jurisdictions applies to a CSE, then the special provision for non-netting jurisdictions would not apply to the CSE even if the relevant jurisdiction is also a "non-netting jurisdiction." In this circumstance, the CSE must collect the gross amount of initial margin in cash (but would not be required to post initial margin), and post and collect variation margin in cash in accordance with the requirements of the special provision for non-segregation jurisdictions, as discussed in section II.B.4.b.

[9] *See* § 23.160(d) of the Final Rule.

[10] The Commission would expect the CSE's counterparty to be a local financial end user that is required to comply with the foreign jurisdiction's laws and that is prevented by regulatory restrictions in the foreign jurisdiction from posting collateral for the uncleared swap in the United States or a jurisdiction for which the Commission has issued a comparability determination under the Final Rule, even using an affiliate.

With respect to each new collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[12]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement—Information Collection for Non-Netting Jurisdictions: The Commission estimates that approximately 54 CSEs may rely on section 23.160(d) of the Final Rule.[13] Furthermore, the Commission estimates that these CSEs would incur an average of 10 annual burden hours to maintain books and records properly documenting that all of the requirements of this exception are satisfied (including policies and procedures ensuring that they are in compliance). Based upon the above, the estimated hour burden for collection is calculated as follows:

Estimated number of respondents per year: 54.

Estimated burden hours per registrant: 10.

Estimated total annual burden hours: 540.

Frequency of collection: Once; As needed.

Burden Statement—Information Collection for Non-Segregation Jurisdictions: The Commission currently estimates that there are between five and ten jurisdictions for which the first two conditions specified above for non-segregation jurisdictions are satisfied and where Foreign Consolidated Subsidiaries and foreign branches of U.S. CSEs that are subject to the Commission's margin rules may engage in swaps. The Commission estimates that approximately12 Foreign Consolidated Subsidiaries and foreign branches of U.S. CSEs may rely on section 23.160(e) of the Final Rule in some or all of these jurisdiction(s). The Commission estimates that each FCS or foreign branch of a U.S. CSE relying on this provision would incur an average 20 annual burden hours to maintain books and records properly documenting that all of the requirements of this provision are satisfied (including policies and procedures ensuring that they are in compliance) with respect to each jurisdiction as to which they rely on the special provision. The Commission further estimates that each FCS or foreign branch of a U.S. CSE relying on this provision would incur an average of 150 additional burden hours per year for all jurisdictions as to which they rely on the provision. Based upon the above, the estimated hour burden for collection is calculated as follows:

Estimated number of respondents per year: 12.

Estimated burden hours per registrant: 150.

Estimated total annual burden hours: 1,800 hours.

Frequency of collection: Once; As needed.

There are no capital costs or operating and maintenance costs associated with this collection.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: May 24, 2016.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2016–12613 Filed 5–27–16; 8:45 am]

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[11] *See* 17 CFR 23.160(e).

[12] 17 CFR 145.9.

[13] Currently, there are approximately 106 swap entities provisionally registered with the Commission. The Commission estimates that of the approximately 106 swap entities that are provisionally registered, approximately 54 are CSEs that are subject to the Commission's margin rules as they are not subject to a Prudential Regulator. Because all of these CSEs are eligible to use the special provision for non-netting jurisdictions, the Commission estimates that 54 CSEs may rely on section 23.160(d) of the Final Rule.

Reader Aids

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